

# **INFORMATION REGARDING THE MERGER OF SCG PIPELINE, INC. AND SOUTH CAROLINA PIPELINE CORPORATION**

**Presented During July 18, 2006, Allowable Ex Parte Communication Briefing  
Before the Public Service Commission of South Carolina**

## **I. INTRODUCTION**

On February 27, 2006, South Carolina Pipeline Corporation ("SCPC") and SCG Pipeline, Inc. ("SCG") filed an application with the Federal Energy Regulatory Commission ("FERC") requesting approval of an offer of settlement negotiated with their customers and the authorizations necessary to permit the merger of SCG into SCPC to form a single, integrated interstate pipeline, to be operated under FERC jurisdiction and called Carolina Gas Transmission Corporation ("Carolina Gas"). A copy of the Merger Application, excluding attachments, is attached as **Exhibit A**.<sup>1</sup>

Although no approval of the merger is required by the Public Service Commission of South Carolina ("Commission"), SCPC understands the interest of the Commission in understanding its activities and the impact of those actions on South Carolina consumers. Therefore, SCPC has submitted the following information pursuant to S.C. Code Ann. § 58-3-260 (C)(6) in order to provide the Commission with a description of the proposed merger.

SCPC is pleased to inform the Commission that none of its existing customers contested the settlement or the application. In addition, on March 31, 2006, the South Carolina Office of Regulatory Staff filed comments with FERC in support of the proposed merger. These comments are attached as **Exhibit B**.

## **II. REASONS FOR THE MERGER**

The merger will serve the present and future public convenience and necessity by authorizing the dedication of SCPC's infrastructure to the open access interstate market, thereby facilitating new interstate gas transportation services that will foster natural gas supply diversity and competition in the southeastern United States and beyond. The country is experiencing heightened need for sufficient interstate pipeline infrastructure that can contribute additional natural gas supply diversity and competitiveness. The market supply situation was exacerbated by the infrastructure damage caused by Hurricanes Katrina and Rita.

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<sup>1</sup> A complete copy of the public version of the Merger Application is available on FERC's website at:

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10966097> (Part 1 of 3)

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10965543> (Part 2 of 3)

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10966027> (Part 3 of 3)

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10966191> (Exhibit Y attachment)

In addition to improving interstate infrastructure and providing a direct means to bring additional supply to market, the combination of the SCPC and SCG systems will provide economic efficiencies resulting from management of the two systems by a single team of managers. FERC Order 2004<sup>2</sup>, which governs Standards of Conduct for Transmission Providers and directly affects SCG Pipeline, technically makes the Hinshaw pipeline, SCPC, an Energy Affiliate under the Standards. Strict FERC Standard of Conduct compliance will be facilitated by SCPC exiting the merchant business and combining with SCG to form a single transportation-only Transmission Provider.<sup>3</sup> SCPC's pre-merger customers and customers in other markets will benefit from FERC's Order No. 436<sup>4</sup> open access and Order No. 636<sup>5</sup> unbundling policies, which prior to the merger do not apply to SCPC. The Carolina Gas system will be poised, through its existing facilities and through future expansions, to provide new alternatives for moving regasified LNG from Elba Island, near Savannah, Georgia, to markets served directly by Carolina Gas and to downstream markets.

### III. MERGER APPLICATION

Pursuant to Sections 7(b) and (c) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717f(b) and (c), and Part 157 of FERC regulations, SCG and SCPC, for themselves and on behalf of Carolina Gas, submitted to the FERC their Abbreviated Joint Application To Accept Offer Of Settlement And For A Certificate Of Public Convenience And Necessity Authorizing Facilities Acquisition And Operation, The Provision Of Jurisdictional Services, And Abandonment, And For Blanket Certificates ("Merger Application"). The Merger Application requested all certificate and other authorizations necessary to permit: (1) the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to FERC jurisdiction; (2) the operation of such interstate pipeline by Carolina Gas, the entity to be formed as a result of the merger; (3) the provision of FERC jurisdictional services by Carolina Gas pursuant to the settlement rates and the settlement *pro forma* FERC Gas Tariff included therein; and (4) the abandonment by SCG of its FERC-certificated facilities through merger and the cancellation of its FERC Gas Tariff and any other authorizations granted by FERC.

The Merger Application also included a petition for FERC's acceptance of a negotiated resolution of the matters arising in connection with the matter. Attached as **Exhibit C** is an

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<sup>2</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *reh'g*, Order No. 2004-B, FERC Stats & Regs. ¶ 31,166 (2004), *reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2005), *reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

<sup>3</sup> On October 27, 2004, FERC granted SCG's petition for temporary, partial waiver of the Standards of Conduct to allow SCPC to continue to perform SCG's daily operations until the merger is complete. *See American Transmission Company LLC*, 109 FERC ¶ 61,082 at PP 39-44 (2004).

<sup>4</sup> A complete copy of Order 436 is available on FERC's website at:

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10078606>

<sup>5</sup> A complete copy of Order 636 is available on FERC's website at:

<http://www.ferc.gov/legal/maj-ord-reg/land-docs/rm91-11-000.txt>

Explanatory Statement, which summarizes the Stipulation and Agreement filed with FERC for approval (“Settlement Agreement”).<sup>6</sup>

## **A. THE PARTIES**

Both SCG and SCPC are wholly-owned subsidiaries of SCANA Corporation (“SCANA”). SCG and SCPC are organized and exist under the laws of the State of South Carolina and both have a principal place of business at 1426 Main Street, Columbia, South Carolina 29201. Carolina Gas also will be organized under the laws of the State of South Carolina and will be a wholly-owned subsidiary of SCANA, with the same principal place of business that SCG and SCPC currently have.

### **1. Existing Facilities and Operations of SCG**

SCG is an interstate natural gas pipeline and a “natural-gas company” within the meaning of NGA Section 2(6)<sup>7</sup> subject to FERC jurisdiction. SCG commenced operations in November 2003, pursuant to FERC authorization. *See Southern Natural Gas Company, SCG Pipeline, Inc.*, Docket Nos. CP02-57-000, CP02-58-000 and CP02-59-000, 99 FERC ¶ 61,345 (2002) (Preliminary Determination on Non-Environmental Issues), 100 FERC ¶ 61,284 (2002) (Order Issuing Certificates, Approving Abandonment and Denying Rehearing). FERC also issued blanket certificates to SCG under Part 157, Subpart F, and Part 284, Subpart G. *Id.*

The SCG pipeline is 31 miles long, originating in Georgia at the tailgate of the Elba Island LNG terminal and extending into Jasper County, South Carolina, where it interconnects with SCPC. The first 13 miles consist of SCG’s undivided interest in two parallel 30-inch diameter pipelines equating to 190,000 Mcf per day of capacity.<sup>8</sup> These facilities connect at Port Wentworth, Georgia, to 18 miles of SCG-constructed 20-inch diameter pipeline. *See Southern*, 99 FERC ¶ 61,345 at P 55 (approving SCG’s purchase of an undivided interest in the two parallel lines from Southern Natural Gas Company (“Southern Natural”)). SCG serves one firm customer, SCANA Energy Marketing, Inc. (“SEMI”), also a SCANA subsidiary, pursuant to a long-term firm transportation contract entered into in conjunction with an open season held by SCG to provide all interested parties with an opportunity to contract for capacity. *See id.* at P 46.

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<sup>6</sup> A complete copy of the Offer of Settlement, including the Explanatory Statement, Stipulation and Agreement, and Draft Letter Order is available on FERC’s website at:

<http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=10965518>

<sup>7</sup> 15 U.S.C. § 717a(6) (2000).

<sup>8</sup> SCG’s undivided interest in the two pipelines is currently calculated at 15.2 percent of the total interest.

## **2. Existing Facilities and Operations of SCPC**

SCPC serves South Carolina markets through its approximately 1,450 miles of transmission lines and related valve stations, system control facilities, and compressor stations. SCPC also currently owns liquefaction, LNG storage, and regasification facilities at Bushy Park, South Carolina and LNG storage and regasification facilities at Salley, South Carolina. These LNG facilities are not included in the assets that are the subject of the Merger Application. Before Carolina Gas is formed by the merger of SCG into SCPC, and before Carolina Gas commences interstate operations, these assets will be acquired by South Carolina Electric and Gas Company for its retail natural gas distribution service.

SCPC receives interstate natural gas from Southern Natural and Transcontinental Gas Pipe Line Corporation ("Transco") and from the terminus of SCG in Jasper County, South Carolina. SCPC is a Hinshaw pipeline exempt from FERC jurisdiction under the NGA. As of December 31, 2005, SCPC served 10 sale for resale customers and 50 industrial customers. Pursuant to rates, terms, and conditions approved by this Commission, SCPC provides bundled sales/transportation service to its customers. SCPC also provides, on a limited basis, experimental transportation-only services approved by this Commission.

## **3. Service to be Provided by Carolina Gas**

Upon FERC approval of the authorizations requested in the Merger Application, SCG will merge into SCPC. SCPC's intrastate services will end on the merger effective date. SCPC will relinquish its Hinshaw exemption, become subject to FERC's jurisdiction over interstate pipelines, and change its name to Carolina Gas. Following the merger, Carolina Gas will own and operate all of the facilities owned and operated by SCG and SCPC at the time of the merger. The resulting Carolina Gas pipeline will be a reticulated web-like system providing at its inception open access, unbundled, firm and interruptible transportation services. Carolina Gas will transport gas supplies received from the Southern Natural and Transco longline interstate pipelines, which access various gas supply regions including the Gulf Coast, north Louisiana, and north Texas, as well as LNG supplied from Elba Island, Georgia. The Carolina Gas system will increase natural gas supply diversity and competition in and beyond the southeastern United States.

## **B. SETTLEMENT PROCESS**

### **1. Pre-Filing Negotiations with Customers**

SCG, SCPC, and their customers invested substantial time and resources in order to reach a settlement before the companies jointly filed to commence interstate service as a single pipeline. At the outset of the settlement process, substantial information about the merger and about the various aspects of the proposed filing was posted on SCG's web-site, <http://www.scgpipeline.com/en>. The pipelines also made several presentations to the prospective customer group and others addressing what would be required to begin operations under FERC oversight. These presentations were augmented by numerous other communications and meetings with individual entities to answer questions, provide data, and to explain further the process and what would be required of all participants.

After establishing this baseline of information, more formal settlement discussions commenced. SCG, SCPC, and 43 other parties, including virtually all of the current and expected future interstate firm customers, entered into confidentiality agreements to commence the pre-filing settlement process. Settlement conferences were held in Columbia on November 9, 2005, and on December 6 and 7, 2005, to discuss the pipelines' settlement proposal.

The parties continued to work toward settlement until a final agreement on the terms of a settlement was achieved with a subgroup of the customers representing the diverse nature of the pipelines' customers and over 85 percent of the firm capacity commitments on Carolina Gas. The terms of settlement agreed upon with the customer subgroup were recommended by the subgroup representatives to the remaining prospective customers. The Settlement Agreement was the result of these substantial efforts by the parties and represented an equitable resolution of the issues surrounding the merger and the resulting formation of Carolina Gas.

## **2. Procedural Status**

The application was filed on February 27, 2006, and requested that FERC grant the requested relief by July 31, 2006. This would allow Carolina Gas to commence operations in advance of the 2006-2007 winter heating season, which should provide the least amount of disruption for customers. If and when a certificate is received from FERC, applicants are allowed a reasonable time to evaluate and determine whether to accept the certificate.

## **IV. KEY SETTLEMENT PROVISIONS**

### **A. UNBUNDLING AND SCPC'S UPSTREAM TRANSPORTATION AND STORAGE CAPACITY**

SCPC currently sells bundled gas and transportation service to gas distributors for resale and to industrial customers located along SCPC's system for direct consumption. In connection with such bundled service, SCPC holds upstream transportation and storage capacity on two interstate pipelines, Southern Natural and Transco.

As part of the unbundling of SCPC's service, the Settlement Agreement provides for the transfer of the upstream capacity currently held by SCPC on Southern Natural and Transco to Carolina Gas customers. As of the effective date of the merger, Carolina Gas will permanently transfer the upstream transportation and storage capacity pursuant to the tariff provisions of the upstream pipelines, FERC's regulations, and any necessary waivers granted by FERC in connection with the Merger Application. The allocation of such upstream capacity is set forth in an attachment to the Settlement Agreement. As set forth more fully in the Settlement Agreement, each customer receiving a release of upstream storage capacity will purchase a pro rata share of SCPC's natural gas in storage at the time of the release. With the exception of storage service that SCPC receives from Transco under its Rate Schedule GSS, the upstream capacity to be allocated was certificated pursuant to Part 284 of FERC's regulations and, therefore, will be transferred pursuant to the capacity release provisions of the upstream pipelines and FERC's regulations.

The upstream storage service that SCPC receives from Transco under its Rate Schedule GSS was certificated pursuant to Part 157 of FERC's regulations and is ineligible for transfer through capacity release. *See* Order No. 636-B at 61,992. In order to permit the transfer of such capacity, on June 21, 2006, Transco filed its Abandonment Application seeking the necessary authorizations required to effectuate the permanent assignment of SCPC's firm bundled storage service under Transco's Rate Schedule GSS to South Carolina Electric & Gas Company ("SCE&G") and Patriots Energy Group ("PEG"). Upon receipt of the requested authorization, SCE&G and PEG will execute part 157 Rate Schedule GSS service agreements in amounts totaling the amount of Rate Schedule GSS capacity currently held by SCPC as set forth in Transco's Abandonment Application.

## **B. SERVICE AGREEMENTS**

In order to be considered settling parties pursuant to the Settlement Agreement, firm customers were required to execute Carolina Gas Firm Transportation ("FT") Service Agreements. With the exception of a few longer-term agreements described below, the FT Service Agreements are for three-year primary terms with the maximum daily transportation quantities set forth in the Settlement Agreement. Each customer's Service Agreement also includes an exhibit setting forth the allocation of upstream capacity the Customer will accept under the Settlement Agreement.

SEMI entered into a Service Agreement with a primary term ending October 31, 2023. This primary term matches the primary term in SEMI's existing transportation agreement with SCG. The Carolina Gas Service Agreement with PEG is a discount contract with a primary term ending March 31, 2018. The PEG contract is a continuation of the arrangement that PEG had negotiated with SCPC reflecting PEG's intention to bypass SCPC unless a discount was offered. The Merger Application also includes a form firm transportation agreement representative of the service agreement that Carolina Gas and Columbia Energy would enter into as provided in Columbia Energy's existing agreement for firm transportation service with SCPC.<sup>9</sup> In that existing agreement the parties anticipated SCPC's conversion to open access interstate service and provided that their arrangement would continue under FERC's jurisdiction for a primary term ending February 29, 2024.

## **C. CAROLINA GAS TARIFF**

Exhibit P to the Merger Application contains the Carolina Gas *pro forma* FERC Gas Tariff ("Settlement Tariff"). The Settlement Tariff includes Rate Schedules and Forms of Service Agreement for firm and interruptible transportation services as well as General Terms and Conditions for those services. The Settlement Tariff incorporates the provisions of the Settlement Agreement and is agreed upon as part of the Settlement Agreement. The Settlement Tariff is consistent with FERC policies set forth in its Order Nos. 637, 587, and 2004.

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<sup>9</sup> On December 21, 2005, Columbia Energy filed for protection under Chapter 11 of the Bankruptcy Code in the Southern District of New York. The status of its transportation contract may be affected by those proceedings.

## **V. CONCLUSION**

SCPC and SCG believe that approval by FERC of the proposed merger will serve the present and future public convenience and necessity for the reasons stated above and that the natural gas consumers in South Carolina and the southeast region will benefit from the continued efforts of Carolina Gas to foster natural gas supply diversity and competition and improved access to imported LNG supplies. In addition, the economic efficiencies that will result from the joint management of SCG and SCPC systems will be a benefit to these consumers. We thank the Commission for the opportunity to appear here today to discuss these important and exciting plans.

**Exhibit A**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Carolina Gas Transmission Corporation	)	
SCG Pipeline, Inc.	)	Docket No. CP06-___-000
South Carolina Pipeline Corporation	)	

**ABBREVIATED JOINT APPLICATION TO ACCEPT OFFER OF SETTLEMENT  
AND FOR  
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY AUTHORIZING  
FACILITIES ACQUISITION AND OPERATION, THE PROVISION OF  
JURISDICTIONAL SERVICES, AND ABANDONMENT, AND FOR BLANKET  
CERTIFICATES**

**I. INTRODUCTION**

Pursuant to Sections 7(b) and (c) of the Natural Gas Act ("NGA"), 15 U.S.C. § 717f(b) and (c), and Part 157 of the Federal Energy Regulatory Commission ("Commission" or "FERC") regulations, SCG Pipeline, Inc. ("SCG") and South Carolina Pipeline Corporation ("SCPC"), for themselves and on behalf of Carolina Gas Transmission Corporation ("Carolina Gas") (collectively "Applicants"), submit to the Commission this Abbreviated Joint Application To Accept Offer Of Settlement And For A Certificate Of Public Convenience And Necessity Authorizing Facilities Acquisition And Operation, The Provision Of Jurisdictional Services, And Abandonment, And For Blanket Certificates ("Settlement and Certificate Application" or "SCA"). This Settlement and Certificate Application requests all certificate and other authorizations necessary to permit: (1) the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to Commission jurisdiction; (2) the operation of such interstate pipeline by Carolina Gas, the entity to be formed as a result of the merger; (3) the provision of jurisdictional services by Carolina Gas pursuant to the settlement initial rates and the settlement *pro forma* FERC Gas Tariff included herein; and (4) the abandonment by SCG of its FERC-



certificated facilities through merger and the cancellation of its FERC Gas Tariff and any other authorizations granted by the Commission.

Applicants further request that the Commission grant Carolina Gas a blanket certificate authorizing Carolina Gas to transport gas on behalf of others pursuant to Subpart G, Section 284.221 of the Commission's regulations;<sup>1</sup> and a blanket certificate authorizing certain construction and operation of facilities and abandonments under NGA Section 7 pursuant to Subpart F, Sections 157.201-218 of the Commission's regulations.<sup>2</sup>

In support of Applicants' requested authorizations, and pursuant to Rules 207(a)(5) and 602 of the Commission's regulations<sup>3</sup> and the guidance provided by the Commission in recent orders accepting settlements,<sup>4</sup> this SCA also includes a petition for Commission acceptance of a Stipulation and Agreement that is a negotiated resolution of the matters arising in connection with this SCA. Pursuant to Section 385.602 of the Commission's regulations, an offer of settlement accompanies this SCA for filing in this docket that includes an explanatory statement, the Stipulation and Agreement ("Settlement Agreement") and a draft letter order. A copy of the Settlement Agreement also is included as part of this SCA in Exhibit I.

Granting the authorizations requested in this SCA is supported by the public convenience and necessity. This SCA also is being filed in partial fulfillment of the obligations of SCG and

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<sup>1</sup> 18 C.F.R. § 284.221 (2005).

<sup>2</sup> 18 C.F.R. §§ 157.201-218 (2005).

<sup>3</sup> 18 C.F.R. §§ 385.207(a)(5), 385.602 (2005).

<sup>4</sup> See, e.g., *Guardian Pipeline, L.L.C.*, 114 FERC ¶ 61,112 (2006) (approving settlement agreement that included a cost and revenue study required by a previous order); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (approving settlement agreement, commending parties for negotiating their differences before making a filing at FERC, and encouraging others to undertake similar settlement efforts); *East Tennessee Natural Gas, LLC*, 113 FERC ¶ 61,099 (2005) (approving settlement agreement filed in accordance with Commission guidance in *Dominion*).

SCPC under the Stipulation and Consent Agreement approved by the Commission in *South Carolina Electric & Gas Company, SCG Pipeline, Inc., SCANA Energy Marketing, Inc., South Carolina Pipeline Corporation, SCANA Services*, 111 FERC ¶ 61,217 at P 5.A (2005). The merger of SCG and SCPC into a single Transmission Provider regulated by the Commission fosters strict Standards of Conduct compliance. Applicants request that the Commission grant the relief requested herein no later than July 31, 2006 so that Carolina Gas can commence operations as an interstate pipeline subject to the Commission's jurisdiction in time for the 2006-2007 winter.

## II. CORRESPONDENCE AND COMMUNICATION

All correspondence and communications regarding this filing should be addressed to the following:

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\*Parties to be designated on the Commission's official service list. Applicants request waiver of Rule 203(b)(3) to allow each of these persons to be designated to receive service.

### **III. BACKGROUND AND GENERAL INFORMATION**

Two of the Applicants' exact legal names are SCG Pipeline, Inc. and South Carolina Pipeline Corporation. SCG and SCPC are wholly-owned subsidiaries of SCANA Corporation ("SCANA"). SCG and SCPC are organized and exist under the laws of the State of South Carolina and both have a principal place of business at 1426 Main Street, Columbia, South Carolina 29201. This SCA also is being filed on behalf of Carolina Gas, which will be formed by the merger of SCG into SCPC and whose exact legal name will be Carolina Gas Transmission Corporation. Carolina Gas also will be organized under the laws of the State of South Carolina and will be a wholly-owned subsidiary of SCANA, with the same principal place of business that SCG and SCPC currently have.

#### **A. Existing Facilities and Operations of SCG**

SCG is an interstate natural gas pipeline and a "natural-gas company" within the meaning of NGA Section 2(6)<sup>5</sup> subject to the Commission's jurisdiction. SCG commenced operations in November 2003, pursuant to Commission authorization. *See Southern Natural Gas Company, SCG Pipeline, Inc.*, Docket Nos. CP02-57-000, CP02-58-000 and CP02-59-000, 99 FERC ¶ 61,345 (2002) (Preliminary Determination on Non-Environmental Issues), 100 FERC ¶ 61,284 (2002) (Order Issuing Certificates, Approving Abandonment and Denying Rehearing). The Commission also issued blanket certificates to SCG under Part 157, Subpart F, and Part 284, Subpart G. *Id.*

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<sup>5</sup> 15 U.S.C. § 717a(6) (2000).

The SCG pipeline is 31 miles long, originating in Georgia at the tailgate of the Elba Island LNG terminal and extending into Jasper County, South Carolina, where it interconnects with SCPC. The first 13 miles consist of SCG's undivided interest equal to 190,000 Mcf per day of capacity in two parallel 30-inch diameter pipelines,<sup>6</sup> which connect at Port Wentworth, Georgia, to 18.2 miles of SCG-constructed 20-inch diameter pipeline. *See Southern*, 99 FERC ¶ 61,345 at P 55 (approving SCG's purchase of an undivided interest in the two parallel lines from Southern Natural Gas Company). SCG serves one firm customer, SCANA Energy Marketing, Inc. ("SEMI"), also a SCANA subsidiary, pursuant to a long-term firm transportation contract. *See id.* at P 46.

#### **B. Existing Facilities and Operations of SCPC**

SCPC serves South Carolina markets through its 1,400-mile web of transmission lines and related valve stations, system control facilities, and compressor stations.<sup>7</sup> SCPC currently receives gas from Southern Natural Gas Company ("Southern Natural") and Transcontinental Gas Pipe Line Corporation ("Transco") and from SCG at SCPC's receipt point in Jasper County, South Carolina. SCPC serves 11 sale for resale customers and 47 industrial customers. Pursuant to rates, terms, and conditions approved by the Public Service Commission of South Carolina ("South Carolina Commission"), SCPC provides bundled sales/transportation service to its customers. SCPC also provides, on a limited basis, an experimental transportation-only service approved by the South Carolina Commission.

<sup>6</sup> SCG's undivided interest in the two pipelines is currently calculated at 15.2 percent of the total interest.

<sup>7</sup> SCPC also owns liquefaction, LNG storage, and regasification facilities at Bushy Park, South Carolina and LNG storage and regasification facilities at Salley, South Carolina. However, these facilities are not included in the assets that are the subject of this SCA. Before Carolina Gas is formed by the merger of SCG into SCPC, and before Carolina Gas commences interstate operations, these assets will be acquired by South Carolina Electric and Gas Company for its retail natural gas distribution service.

**C. Proposed Merger and Service to be Provided by Carolina Gas**

Upon Commission approval of the authorizations requested herein, SCG will merge into SCPC. SCPC intrastate services will end on the merger effective date. SCPC will relinquish its Hinshaw exemption, become subject to the Commission's jurisdiction over interstate pipelines, and change its name to Carolina Gas Transmission Corporation.<sup>8</sup> Following the merger, the resulting entity, Carolina Gas, will own and operate all of the facilities that were owned and operated by SCG and SCPC at the time of the merger. The resulting Carolina Gas pipeline will be a reticulated web-like system providing at its inception open access, unbundled, firm and interruptible transportation services and interruptible parking and lending service for interstate gas markets. Carolina Gas will transport gas supplies received from the Southern Natural and Transco longline pipelines, which access various gas supply regions including the Gulf Coast, north Louisiana and north Texas, as well as LNG supplied at Elba Island, Georgia. The Carolina Gas system will increase natural gas supply diversity and competition in and beyond the southeastern United States.

**D. Pre-Filing Negotiations with Customers**

Consistent with the Commission's policy on settlements, and the encouragement it has offered to jurisdictional entities to attempt to reach mutually acceptable compromises with customers before submitting filings to the Commission,<sup>9</sup> Applicants and their customers invested substantial time and resources in order to reach a settlement before the companies jointly filed to commence interstate service as a single pipeline.

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<sup>8</sup> Applicants also will make the required filings to transfer certain FCC and other licenses to Carolina Gas.

<sup>9</sup> See, *supra*, n.4.

As described below more fully, the merger of SCG and SCPC, and the conversion of SCPC to open access interstate service, raise many of the same issues and provide substantially similar benefits for the public convenience and necessity that existed when the interstate pipeline industry moved to transportation-only service pursuant to Commission Order No. 636.<sup>10</sup> The Order No. 636 transition was accomplished largely through Commission approval of pipeline and customer settlements and, this history, as well as the Commission guidance described above, influenced Applicants to adopt a cooperative approach to the transition proposed here.

At the outset of this process, Applicants posted on SCG's web site substantial information about the merger and about the various aspects of the Applicants' filing at the Commission to become a single interstate pipeline. In addition, Applicants also made several presentations to the prospective customer group and others addressing what would be required to begin operations under FERC oversight. These presentations were augmented by numerous other communications and meetings with individual entities to answer questions, provide data, and to explain further the process and what would be required of all participants.

After establishing this baseline of information, Applicants commenced more formal settlement discussions modeled on the template that had received Commission acceptance in *Dominion and East Tennessee*. Applicants and 43 parties, including virtually all of Applicants' current and expected future interstate firm customers and others, entered into confidentiality agreements to commence the pre-filing settlement process. On November 9, 2005, Applicants and the interested participants, as well as the agents invited by those participants, met in

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<sup>10</sup> *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 1991-96 FERC Stats. & Regs., Regs. Preambles ¶ 30,939, *order on reh'g*, Order No. 636-A, 1991-96 FERC Stats. & Regs., Regs. Preambles ¶ 30,950 at 30,604, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), Notice of Denial of Rehearing, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part*, *United Dist. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

Columbia, South Carolina for a full day of settlement discussions. Many of these participants and their agents traveled great distances to attend the settlement conference. Prior to the November 9 settlement conference, Applicants had distributed to those that executed confidentiality agreements a comprehensive and integrated set of settlement principles. At the close of the November 9 settlement conference, the participants agreed to continue to pursue settlement discussions. Over the next several weeks, the participants and Applicants continued to work toward settlement and a two-day settlement conference was convened on December 6 and 7, 2005, again in Columbia, South Carolina.

Shortly after this second conference, a unified customer counterproposal for settlement was presented to Applicants. Over the course of the next two months and throughout the holiday season, the participants worked to reach a fair and reasonable resolution of this entire matter, conducting further settlement discussions through telephone conferences and electronic means. On December 22, 2005, Applicants provided to all participants that had executed confidentiality agreements a second settlement proposal responding to the unified customers' counterproposal. The customers and Applicants continued to work toward settlement and on January 31, 2006, the unified customers presented Applicants with a second counterproposal that significantly narrowed the issues for discussion. To finalize a settlement on the remaining matters, over the next several weeks Applicants worked with a subgroup of customer representatives. That group consisted of over 85 percent of the firm capacity commitments on Carolina Gas (almost 95 percent of the firm commitments not counting one customer that abstained from further participation in the unified customers' offers after it filed for bankruptcy protection, as discussed below) and represented the diverse nature of Applicants' customers by including customers of both SCG and SCPC, affiliated and non-affiliated customers, investor-owned and municipal-

owned sale for resale customers and major industrial customers. During that time, several conference calls were held between Applicants and the customers' representatives and a final agreement on the terms of a settlement was achieved with the customers participating in the subgroup. The terms of settlement agreed upon with the subgroup customers were recommended by the subgroup representatives to the customers representing the remaining 5 percent of the participating load for their adoption. The Settlement Agreement is the result of these substantial efforts by the parties involved and represents an equitable resolution of the issues surrounding the merger and the resulting formation of Carolina Gas.

**IV. ACCEPTANCE OF THE SETTLEMENT AND GRANT OF THE REQUESTED AUTHORIZATIONS ARE REQUIRED BY THE PUBLIC CONVENIENCE AND NECESSITY**

Applicants' proposal serves the present and future public convenience and necessity by authorizing the dedication of substantial additional infrastructure to the open access interstate market, thereby facilitating new interstate gas transportation services that will foster natural gas supply diversity and competition in the southeastern United States and beyond. Applicants submit that prompt issuance of the requested authorizations is required by the public convenience and necessity. Applicants request that the Commission grant the relief requested herein no later than July 31, 2006 so that Carolina Gas can commence operations as an interstate pipeline subject to the Commission's jurisdiction in time for the 2006-2007 winter.

As the Commission frequently has recognized, the country is experiencing heightened need for sufficient interstate pipeline infrastructure that can contribute additional natural gas supply diversity and competitiveness.<sup>11</sup> The market supply situation was exacerbated by the

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<sup>11</sup> See *Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 at PP 1-3, 6 (2005).



infrastructure damage caused by Hurricanes Katrina and Rita.<sup>12</sup> The Commission Staff recently noted that demand for natural gas in the United States has continued to grow for the past several years, while natural gas production in the United States has fallen slightly during this time period, and imports have grown only modestly.<sup>13</sup> According to Staff, the result has been increases in the price of natural gas every year since 2002, with the most dramatic increases evident in 2005.<sup>14</sup> Further, “[m]uch of the increase in natural gas prices came from tight supplies.”<sup>15</sup> Without the addition of significant new supplies, the price of natural gas likely will continue to rise. As the Commission Staff pointed out earlier this month, “[f]orward prices for next winter are 30 to 40 percent higher than current prices.”<sup>16</sup>

As a result of the proposed merger, approximately 1,400 miles of pipeline will no longer be limited to intrastate services, but instead will be dedicated to open access interstate service, thereby expanding interstate pipeline infrastructure without the delay, uncertainty and environmental disturbances inherent in a new construction project. Through its interconnections with Southern and Transco, Carolina Gas will access various domestic gas supply regions, including the Gulf Coast, north Louisiana and north Texas. Carolina Gas also will access LNG supplies from the expanding Elba Island, Georgia, LNG terminal facility. Prompt issuance of the requested authorizations will further the Commission’s objective of expediting the development

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<sup>12</sup> See *id.*

<sup>13</sup> See, e.g., *High Natural Gas Prices: The Basics*, FERC Edition 1, December 8, 2005 at p. 2 (available at <<http://www.ferc.gov/legal/staff-reports/high-gas-prices-1.pdf>>).

<sup>14</sup> See, e.g., *id.*

<sup>15</sup> *Gulf Coast Storms Exacerbate Tight Natural Gas Supplies; Already High Prices Driven Higher*, Federal Energy Regulatory Commission Staff Report, October 12, 2005 at p. 2 (available at <<http://www.ferc.gov/EventCalendar/Files/20051020121515-Gaspricereport.pdf>>).

<sup>16</sup> See, e.g., *High Natural Gas Prices: The Basics*, FERC Edition 2, February 1, 2006 at p. 4 (available at <<http://www.ferc.gov/legal/staff-reports/high-gas-prices.pdf>>).

of energy infrastructure projects<sup>17</sup> and would be consistent with its intent to make final decisions on proposed projects in a timely manner.<sup>18</sup>

In addition to improving interstate infrastructure and providing a means to bring additional supply to market, the combination of the SCPC and SCG systems will provide economic efficiencies resulting from the joint management of the two systems by consolidating accounting, regulatory and administrative requirements. Strict Standard of Conduct<sup>19</sup> compliance will be facilitated by the Hinshaw pipeline, SCPC (technically an Energy Affiliate under the Standards), exiting the merchant business and combining with SCG to form a single transportation-only Transmission Provider.<sup>20</sup> SCPC's pre-merger customers and customers in other markets will benefit from the Commission's Order No. 436 open access and Order No. 636 unbundling policies, which prior to the merger do not apply to SCPC. The Carolina Gas system will be poised, through its existing facilities and through future expansions, to provide new alternatives for moving regasified LNG from Elba Island to markets served directly by Carolina Gas and to downstream markets.

<sup>17</sup> See *Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 at PP 1-3, 6 (2005) (temporarily waiving blanket certificate restrictions in order to expedite the construction of infrastructure), 114 FERC ¶ 61,286 (2006) (extending waiver until February, 2007); see also Energy Policy Act of 2005 at § 313(c)(1)(A), Pub. L. No. 109-58, 119 Stat. 594 (2005) (directing FERC to "ensure expeditious completion" of NGA Section 7 proceedings); *Coordinated Processing of NGA Section 3 and 7 Proceedings*, 113 FERC ¶ 61,170 (2005) (implementing the Energy Policy Act's directive by delegating to staff the authority to establish deadlines for all federal authorizations necessary for NGA Section 7 proposals).

<sup>18</sup> FERC Strategic Plan FY 2005 - FY 2008, Goal 1, Objective 1.1, (available at <<http://www.ferc.gov/about/strat-docs/strat-plan.asp>> (last updated Aug. 8, 2005)).

<sup>19</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), *reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2005), *reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

<sup>20</sup> On October 27, 2004, the Commission granted SCG's petition for temporary, partial waiver of the Standards of Conduct to allow SCPC to continue to perform SCG's daily operations until the merger is complete. See *American Transmission Company LLC*, 109 FERC ¶ 61,082 at PP 39-44 (2004).

The Settlement Agreement provides support for the Commission's acceptance of the SCA and should enable the Commission to grant the requested authorizations promptly. The terms of the Settlement Agreement have been incorporated into this SCA. Acceptance of the Settlement Agreement and granting the requested authorizations to permit the proposed merger of SCG and SCPC and formation of Carolina Gas is in the public convenience and necessity. The Settlement Agreement evidences customer support for the proposed merger and resolves issues that otherwise might need to be addressed through costly and lengthy litigation involving the parties and the Commission.

## V. JOINT APPLICATION

### A. Petition for Acceptance of Settlement

The Commission has recognized the benefits of encouraging pipelines and shippers to resolve issues before initiating potentially expensive, time-consuming proceedings.<sup>21</sup> The Commission recently provided the industry with guidance on procedures for implementing settlements outside the context of an existing proceeding.<sup>22</sup> Specifically, the Commission provided that parties in such situations should file settlement agreements and related items pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207(a)(5).<sup>23</sup> Because Applicants' Settlement Agreement relates to this SCA, which, upon its filing initiates a pending proceeding before the Commission, in the spirit of the Commission's recent guidance on settlements, Applicants file the Settlement Agreement pursuant to both Sections 385.207(a)(5) and 385.602.

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<sup>21</sup> See, *supra*, note 4.

<sup>22</sup> *Dominion, supra*, at P 32.

<sup>23</sup> *Id.*

In accordance with the Commission's guidance in *Dominion* and the subsequent approval of East Tennessee's settlement agreement filed pursuant to such guidance, as part of this application, Applicants petition for Commission approval of the Settlement Agreement, included in Exhibit I and filed separately in this docket as an offer of settlement pursuant to Section 385.602 of the Commission's regulations. The terms and conditions of the Settlement Agreement are the product of substantial inter-customer negotiation and compromise, as well as negotiation and compromise between Applicants and their customers. The Settlement Agreement reflects an overall balancing of the various competing interests among customers and among Applicants and the various customer constituencies. As a part of the settlement, the parties listed on Attachment 1 to the Settlement Agreement ("Customers") are to execute Rate Schedule FT Transportation Agreements in the form of service agreement included in the *pro forma* settlement FERC Gas Tariff included with this SCA.<sup>24</sup> Approval of the Settlement Agreement will provide current SCPC and SCG customers as well as future Carolina Gas customers with the benefits of the services offered by Carolina Gas, without the expense and uncertainty of litigation. The Settlement Agreement is in the public interest and should be promptly approved without modification or condition.

**B. Request for Certificate Authority**

**1. Merger of SCG and SCPC and Formation of Carolina Gas**

Applicants request all certificate and other authorizations necessary to permit: (1) the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to Commission jurisdiction; (2) the operation of such interstate pipeline by Carolina Gas, the entity to be formed

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<sup>24</sup> Within five (5) business days after the filing with the Commission of the Settlement Agreement and this SCA, Applicants will provide to each Customer a form of service agreement for the Customer's execution. In order to be a Settling Party, as that term is used in the Settlement Agreement, Customers must execute the form of service agreement provided by Applicants pursuant to, and within the time frame set out, in Article V of the Settlement Agreement.

as a result of the merger; and (3) the provision of jurisdictional services by Carolina Gas pursuant to the settlement initial rates ("Settlement Rates") and the *pro forma* settlement FERC Gas Tariff ("Settlement Tariff") included herein. Applicants further request that the Commission grant Carolina Gas a blanket certificate authorizing Carolina Gas to transport gas on behalf of others pursuant to Subpart G, Section 284.221 of the Commission's regulations;<sup>25</sup> and a blanket certificate authorizing certain construction and operation of facilities and abandonments under NGA Section 7 pursuant to Subpart F, Sections 157.201-218 of the Commission's regulations.<sup>26</sup> Upon receipt of the requested blanket certificates, Carolina Gas will comply with the conditions set forth in Subpart A, Part 284 and Subpart F, Part 157 of the Commission's regulations.

Because no construction of facilities or ground disturbance is proposed here,<sup>27</sup> consistent with the Commission's treatment of certificate applications where no construction or ground disturbance is proposed, neither an environmental assessment nor impact statement should be required. *See, e.g., Chandeaur Pipe Line Company*, 107 FERC ¶ 61,162 (2004) (approving acquisition of an offshore gathering company and making it part of Chandeaur's interstate pipeline system and finding that the transaction qualified for a categorical exclusion under Section 380.4(a)); *Equitrans, L.P.*, 104 FERC ¶ 61,008 at P 37 (2003) (approving merger of interstate pipelines and finding that an environmental review was not necessary because facilities were abandoned by sale through the merger and no construction was required).

<sup>25</sup> 18 C.F.R. § 284.221.

<sup>26</sup> 18 C.F.R. §§ 157.201-218.

<sup>27</sup> As a result of the operational balancing agreement ("OBA") that Carolina Gas will enter into with Southern Natural following the receipt of the requested authorizations and the completion of the merger, Southern Natural will install new flow control equipment at an interconnection between Southern Natural and Carolina Gas. *See* Southern Natural FERC Gas Tariff, Section 13.3(a)(iii), Fifth Revised Sheet No. 139.

## **2. Abandonment by SCG**

SCG requests that the Commission permit and approve the abandonment of SCG's facilities through the merger proposed herein and the cancellation of its FERC Gas Tariff and any other authorizations granted by the Commission. As a result of the merger, all of the facilities owned and operated by SCG immediately prior to the merger will be owned and operated by Carolina Gas and the services previously provided by SCG will be provided by Carolina Gas. SEMI, SCG's only current firm transportation customer, will enter into a long-term service agreement with Carolina Gas as discussed more fully below. SCG's interruptible transportation customers will be able to continue to receive such transportation service from Carolina Gas.

## **3. Unbundling and SCPC's Upstream Transportation and Storage Capacity**

SCPC currently sells bundled gas and transportation service to gas distributors for resale and to industrial customers located along SCPC's system for direct consumption. In connection with such bundled service, SCPC holds upstream transportation and storage capacity on two interstate pipelines, Southern Natural and Transco. For these reasons, SCPC's transition from bundled intrastate service to transportation-only interstate service raises many of the same considerations that arose during the Order No. 636 restructuring process: the unbundling of existing services; the termination of the pipeline's merchant sales function; the transition to open access, transportation-only service; the use of straight fixed variable ("SFV") cost allocation and rate design; and the assignment of contracts for upstream transportation and storage capacity.<sup>28</sup>

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<sup>28</sup> SCPC's gas purchase contracts, which it used to support its regulated bundled sales service, will expire before Carolina Gas commences interstate service. Accordingly, it will not be necessary to assign these contracts to customers.

As part of the unbundling of SCPC's service, Applicants and Customers have agreed to the transfer of the upstream capacity currently held by SCPC on Southern Natural and Transco to Carolina Gas customers. As of the effective date of the merger, Carolina Gas will permanently transfer the upstream transportation and storage capacity pursuant to the tariff provisions of the upstream pipelines, the Commission's regulations and any necessary waivers granted by the Commission in connection with this SCA. The allocation of such upstream capacity is set forth in Attachment 2 of the Settlement Agreement.<sup>29</sup> With the exception of storage service that SCPC receives from Transco under its Rate Schedule GSS, the upstream capacity to be allocated was certificated pursuant to Part 284 of the Commission's regulations and, therefore, will be transferred pursuant to the capacity release provisions of the upstream pipelines and the Commission's regulations.

The upstream storage service that SCPC receives from Transco under its Rate Schedule GSS was certificated pursuant to Part 157 of the Commission's regulations and is ineligible for transfer through capacity release. See Order No. 636-B at 61,992. In order to permit the transfer of such capacity, Applicants request authorization and waiver of any regulations or policies to permit the permanent, one-time assignment of such SCPC capacity to SCPC's former firm sales customers as provided in the Settlement Agreement. Upon assignment, the transfer will continue to be Part 157 capacity. Applicants are supported by Transco in this assignment and Applicants also request that the Commission grant any authorization or waiver that may be needed by Transco to facilitate the assignment of capacity from SCPC to its former firm sales customers.

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<sup>29</sup> Pursuant to the Settlement Agreement, the Customers accepting their respective allocation of assets identified in Attachment 2 to the Settlement Agreement will not be subject to the Transition Cost Surcharge identified in Carolina Gas' tariff. As set forth more fully in the Settlement Agreement, each Customer receiving a release of upstream storage capacity will purchase a pro-rata share of SCPC's natural gas in storage at the time of the release.

The transfer of the Transco Rate Schedule GSS capacity should be permitted as part of SCPC's transition from intrastate service to an unbundled, open access interstate service. In its Order No. 636 restructuring proceedings, the Commission implemented Section 284.242 of its regulations, which required pipelines to assign any capacity they held on upstream pipelines and required the upstream pipelines to permit the downstream pipelines to assign their firm capacity to their customers. *See id.* at 62,006. The Commission deleted Section 284.242 from its regulations after pipelines had implemented Order No. 636 in their restructuring proceedings and in recognition of the Commission's change in policy to allow pipelines to hold upstream capacity without prior Commission approval.<sup>30</sup> Although Section 284.242 no longer exists, that mechanism for transferring Part 157 capacity should be adopted by the Commission here, where SCPC is making the transition from intrastate service to interstate service and the Customers have agreed to the allocation of such capacity. The transfer of the storage capacity held by SCPC on Transco will facilitate customer use of the Carolina Gas interstate system. For the foregoing reasons, Applicants request that the Commission permit the assignment of the capacity held under Transco's Rate Schedule GSS to former SCPC firm sales customers upon the effective date of the merger.

#### **4. Initial Rates and Rate Mitigation**

##### **a. Initial Rates, Cost of Service and Financing**

Applicants have included two sets of initial rates as part of this SCA: Settlement Rates and Alternate Rates. Both sets of rates are zone of delivery rates, with two zones, based on SFV cost allocation and rate design. Zone 1 consists of the former SCPC facilities and Zone 2 consists of the former SCG facilities. Applicants also provide for Negotiated Rates on Carolina

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<sup>30</sup> *See Assignment of Firm Capacity on Upstream Interstate Pipelines*, Order No. 892, 101 FERC ¶ 61,207 (2002).



Gas in the General Terms and Conditions (Section 29) of the Settlement Tariff. Carolina Gas will finance its capital investments with advances from SCANA and through its own debt.

Pursuant to this SCA, substantial natural gas transmission infrastructure is being dedicated to open access interstate service. The Alternate Rates conform to Commission precedent and policy regarding NGA Section 7 initial rates. The expenses and facilities costs that underlie the Alternate Rates are taken from the books and records of the two merging pipelines, with *pro forma* adjustments to reflect SCPC's exit from the merchant business and its conversion to interstate transmission-only service. Rate base includes the post-merger plant in service, accumulated depreciation, accumulated deferred income taxes, and construction work in progress as of the expected merger date. Also included in rate base are materials and supplies based on a 13-month average inventory level. No cash working capital allowance is proposed. The rates are derived using SCPC's current amortization rate for intangible plant, 10 percent, and its current depreciation rates for transmission plant, 1.83 percent, and general plant, 8.67 percent. SCG's current depreciation rates are 2.50 percent for all classes of plant. Using SCPC's current depreciation rates reduces the amount of depreciation expense contained in Carolina Gas' initial rates, as compared to the use of SCG's existing depreciation rates.

Carolina Gas' transmission cost of service for the Alternate Rates is \$53.1 million, incorporating an overall, after tax rate of return of 9.82 percent and an ROE of 14 percent. A ROE of 14 percent is supported by Commission action in other recent Section 7 proceedings. *See, e.g., Dominion South Pipeline Company, L.P.*, 113 FERC ¶ 61,064 (2005) (approving ROE of 14 percent); *Corpus Christi LNG, L.P., Cheniere Corpus Christi Pipeline Company*, 111 FERC ¶ 61,081 at P 33 (2005) (approving ROE of 14 percent). That ROE level also is supported by the greater level of risk that industry analysts have determined currently affect the interstate

pipeline business.<sup>31</sup> In Carolina Gas' case, its overall after tax rate of return is lower than other pipelines with comparable ROE levels, because Carolina Gas has been able to achieve a debt cost of 5.46 percent, which is substantially lower than the norm. The Alternate Rates are supported by the public convenience and necessity and should be approved by the Commission for Carolina Gas' services to apply to any contesting party. But for the Settlement Agreement, these Alternate Rates would apply to all customers.

The Settlement Rates are derived on the same basis as the Alternate Rates, with three principal differences. First, certain rate base and expense items were the subject of compromise for settlement purposes in the calculation of the Settlement Rates. The Alternate Rates do not include these compromises. See Exhibit P, Appendix D, to the SCA. Second, the Settlement Rates incorporate a 12.7 percent ROE. This compromise ROE also is supported by Commission precedent and, in fact, is lower than the ROE granted to SCG when that pipeline was granted certificate authorization. The Commission approved an equity rate of 13.3 percent for SCG. *Southern Natural Gas Pipeline, SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 at P 82 (2002). The cost of service underlying the Settlement Rates is \$50.6 million, incorporating an overall after tax rate of return of 9.08 percent.

The third principal difference between the Alternate Rates and the Settlement Rates concerns the billing determinants for Columbia Energy LLC ("Columbia Energy") included in the rate calculation. Columbia Energy has a long-term transportation contract with SCPC, which provides that Columbia Energy will continue to receive transportation service from the pipeline if the pipeline converts to interstate service. That contract calls for Columbia Energy to continue

<sup>31</sup> See *State of the Natural Gas Infrastructure Conference*, Docket No. AD05-14-000, October 12, 2005, Transcript at 135, 159-60, 180-81, 196 (comments of FERC Commissioners, energy industry participants and investors recognizing risk in the pipeline industry).

to reserve 85,000 Dth per day of firm pipeline capacity. However, on December 20, 2005, Columbia Energy and its parent, Calpine Corporation ("Calpine"), filed voluntary petitions to restructure under Chapter 11 of the United States Bankruptcy Code. Many issues face Calpine and Columbia Energy during their restructuring and Columbia Energy has not yet made the election afforded it under the Bankruptcy Code regarding whether to assume or reject its contract for future transportation service from Carolina Gas. Based on experience, Applicants estimate that if Columbia Energy rejects its contract with SCPC, the firm capacity contracted for on Carolina Gas related to Columbia Energy's South Carolina plant may be as low as 12,000 Dth per day. The Alternate Rates are based on billing determinants associated with the Columbia Energy plant set at the 12,000 Dth per day level. The Settlement Rates are based on billing determinants for Columbia Energy of 70,000 Dth per day, reflecting Applicants' agreement in the Settlement to accept the risk during a moratorium period that Carolina Gas will have rates in effect set at a billing determinant level that could be more than 55,000 Dth per day higher than the actual level.

The Settlement Rates are the result of compromises made in order to foster settlement and avoid expensive and lengthy litigation. The Settlement Rates are based on billing determinants equaling Maximum Daily Transportation Quantities ("MDTQ") agreed to as part of the Settlement Agreement by the Customers listed on Attachment 1 to the Settlement Agreement. As a part of the Settlement Agreement, Customers will enter into Rate Schedule FT Transportation Service Agreements ("Service Agreements") in the form of service agreement included in the Settlement Tariff with the MDTQ amounts set forth for each Customer in Attachment 3 to the Settlement Agreement. If the Customers do not enter into Service Agreements at the agreed upon MDTQ amounts, the integrated and interdependent compromises

of the Settlement Agreement will be undermined because Applicants will not be able to collect the agreed upon revenue requirement. In order to implement Customers' MDTQ obligation, Applicants will send each Customer a Service Agreement within five (5) business days after the filing of the Settlement Agreement and this SCA that will include the agreed upon MDTQ level set forth in Attachment 3 to the Settlement Agreement. Prior to the deadline for filing initial comments regarding the Settlement Agreement and for filing comments, interventions and protests to the SCA, as established by Commission notice, Customers shall execute and return to Applicants their Service Agreements in order to be considered settling parties pursuant to the Settlement Agreement.<sup>32</sup> Pursuant to the Settlement Agreement, any Customer that does not return such an executed Service Agreement will be considered a contesting party and will be ineligible to receive service at the Settlement Rates.

If any party contests this SCA or the Settlement Agreement, the Commission should determine that the Settlement Agreement nonetheless applies to a contesting party. If the Commission makes that determination, such contesting party shall be deemed to be a settling party under the Settlement Agreement; provided, however, that any Customer that does not execute a Service Agreement at the agreed upon MDTQ level, shall not be eligible to receive the Settlement Rates. If, however, the Commission orders a contesting party to be severed to separately litigate and/or otherwise contest issues in this proceeding without delaying the implementation of the Settlement Agreement, such contesting party shall be entitled to only such rate and other relief as is ultimately determined appropriate by the Commission in a final, nonappealable order establishing the outcome of this proceeding with respect to such party.

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<sup>32</sup> In addition to this requirement, the Settlement Agreement also requires that in order to be a settling party, a party must either (1) file no comments regarding the Settlement Agreement or the SCA; or (2) file comments that affirmatively support, or do not oppose or seek modification of any provision of the Settlement Agreement or the SCA.

The Settlement Rates are supported by the public convenience and necessity, are just and reasonable and Applicants request that the Commission accept the Settlement Agreement without modification or condition, and that the Settlement Rates set forth in Exhibit P be effective on the merger effective date and be applicable to all Carolina Gas customers with the exception of contesting parties that are severed and Customers that do not execute Service Agreements as set forth above. This SCA asks the Commission to approve the parties' Settlement Agreement and to find that the Settlement Rates should (1) take effect for all Customers, with the exception of any Customers that do not enter into a Rate Schedule FT Transportation Service Agreement at the agreed upon MDTQ levels, and (2) serve as the recourse rates available to any future shipper on the Carolina Gas system.

**b. Mitigation**

The Settlement Agreement provides for two forms of mitigation. The first type of mitigation is for customer deliveries in Carolina Gas Zone 2, which consists of the current SCG interstate system. SCG has one firm customer, SEMI, an affiliate of SCG, SCPC and Carolina Gas. Without any mitigation, the Settlement would result in a substantial increase of approximately 25 percent in rates for this customer for deliveries in Zone 2. Based on the total balance of compromises and benefits achieved in the Settlement, Applicants and the Customers have agreed to mitigate the severity of this increase by limiting it to 15 percent above SEMI's current rates. The Zone 2 reservation charge, included in both the Alternate and Settlement Rates, reflects this mitigation. These mitigated costs will be spread among the Zone 1 billing determinants.

Similar to what occurred during the Order No. 636 transition, SCPC's sale for resale customers will experience an increase in their revenue responsibility relating to rate making

changes. Unlike SCPC's rates, Carolina Gas' rates will be based on SFV cost allocation and rate design. In addition, as is true in many states, the rates of industrial customers in South Carolina are designed to provide a greater contribution to a utility's revenue requirement than the contribution required of other customer classes. This results in some subsidy for the rates for the sale for resale customers that serve residential and commercial consumers. As was the case in restructuring proceedings following Order No. 636, mitigation of the increased rates for sale for resale customers on Carolina Gas is appropriate and the Settlement Agreement includes a fair level of mitigation for such customers. The Settlement Agreement provides for summer mitigation of Carolina Gas' Zone 1 rates, pursuant to which eligible customers will receive mitigation with respect to a portion of their Rate Schedule FT capacity through a reduction of their MDTQ during the months of May through October. This mitigation is included in the calculation of both the Alternate Rates and Settlement Rates.

The reduction in billing determinants described above would result in a higher reservation rate. Carolina Gas will share in this rate effect equally with customers by eliminating from the calculation of rates 50% of the costs that would be shifted due to this reduction in billing determinants. This results in \$710,787 in annual costs being eliminated from the Zone 1 reservation charge. Carolina Gas will have the opportunity to recover the annual cost of service amount of \$710,787 through the sale of IT service and short-term FT service. After Carolina Gas has recovered the \$710,787 through such sales, Carolina Gas shall share any additional revenues from such sales with customers in proportion to the total revenues paid by each customer under Rate Schedule FT to the total revenues received by Carolina Gas under Rate Schedule FT during the accrual period, pursuant to Section 28 of the Settlement Tariff. Carolina Gas will make a filing with the Commission each year in conjunction with its IT revenue sharing

mechanism setting out how much, if any, of the \$710,787 Carolina Gas has recovered and further setting out any amounts recovered over the \$710,787. Any amount of the \$710,787 that is not recovered by Carolina Gas during an annual recovery period will not be eligible for recovery in a subsequent annual recovery period.

#### **5. Service Agreements**

As discussed above, Applicants will send each Customer a Service Agreement within five (5) business days after the filing of the Settlement Agreement and this SCA with the FERC. Prior to the deadline for filing initial comments regarding the Settlement Agreement and for filing comments, interventions and protests to the SCA, as established by Commission notice, Customers shall execute and return to Applicants their Service Agreements in order to be considered settling parties pursuant to the Settlement Agreement. As provided for in the Settlement Agreement, with the exception of longer-term agreements discussed below, the Service Agreements will be for three-year primary terms with the MDTQ amounts set forth in Attachment 3 to the Settlement Agreement. Each Customer's Service Agreement also shall include an exhibit setting forth the allocation of upstream capacity as set forth in Attachment 2 to the Settlement Agreement. Pursuant to the Settlement Agreement, Customers will accept the assignment of such upstream capacity.

Within the time period set out above, SEMI will enter into a Service Agreement, with a primary term ending October 31, 2023. This primary term matches the primary term in SEMI's existing transportation agreement with SCG. The Carolina Gas Rate Schedule FT Service Agreement with the Patriots Energy Group ("PEG") is a discount contract with a primary term ending March 31, 2018. The PEG contract is a continuation of the arrangement that PEG had negotiated with SCPC reflecting PEG's intention to bypass SCPC unless a discount was offered.

The PEG Service Agreement is based on the form of service agreement included in the Settlement Tariff, but is filed for the Commission's review and approval as part of Exhibit I to this SCA because Exhibit C to that agreement would represent a deviation from Carolina Gas' form of service agreement if not for the tariff provision referenced below that Applicants have included in the Settlement Tariff. Exhibit C to that agreement sets out PEG's right to increase its MDTQ in the future under certain circumstances. This provision is similar to those addressed by the Commission in *Northern Natural Gas Company*, 111 FERC ¶ 61,287, *reh'g denied*, 113 FERC ¶ 61,119 (2005) (finding agreement with load growth option to be in conformance with tariff amendments making such option generally available), *appeal docketed*, No. 05-1468 (D.C. Cir. Dec. 27, 2005); *Northern Natural Gas Company*, 111 FERC ¶ 61,141 (2005) (accepting tariff provisions that made load growth option generally available to all Northern customers); *Northern Natural Gas Company*, 110 FERC ¶ 61,321, *reh'g denied*, 111 FERC ¶ 61,379, *reh'g denied*, 113 FERC ¶ 61,188 (2005) (requiring Northern to place load growth option in its tariff to make it generally available to all shippers), *appeal docketed*, No. 06-1016 (D.C. Cir. Jan. 12, 2006). Consistent with that Commission precedent, the Settlement Tariff includes a provision that makes such a right to increase MDTQ generally available to all customers under similar conditions. See Exhibit P, Settlement Tariff, Rate Schedule FT, Section 2.6. PEG will execute this Service Agreement within the time period set out above.

Also included for the Commission's review as part of Exhibit I to this SCA is a form transportation agreement representative of the service agreement that Carolina Gas and Columbia Energy would enter into as provided in Columbia Energy's existing agreement for firm transportation service with SCPC. In that existing agreement the parties had anticipated SCPC's conversion to open access interstate service and had provided that their arrangement



would continue under this Commission's jurisdiction for a primary term ending February 29, 2024. The contract included with Exhibit I for informational purposes is based on Carolina Gas' form of service agreement and Applicants do not believe that it materially deviates from that form.<sup>33</sup>

## **6. Tariff**

Exhibit P contains the Carolina Gas *pro forma* Settlement Tariff. The Settlement Tariff includes Rate Schedules and Forms of Service Agreement for firm and interruptible transportation and interruptible parking and lending services as well as General Terms and Conditions for those services. The Settlement Tariff incorporates the provisions of the Settlement Agreement and is agreed upon as part of the Settlement Agreement. The Settlement Tariff is consistent with Commission policies set forth in Order Nos. 637, 587, and 2004. Exhibit P, Appendix B, to the SCA includes charts identifying the provisions by which the Settlement Tariff complies with Order No. 637 and NAESB requirements.

## **VI. REQUEST FOR WAIVER OF SCG'S COST AND REVENUE STUDY REQUIREMENT**

Applicants request waiver of the requirement imposed by the Commission in its order granting certificate authority to SCG that SCG file a cost and revenue study at the end of its first three years of operation. *See Southern Natural Gas Company, SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 at 62,480 (2002). Such study would be due in November 2006. Applicants propose an in-service date for Carolina Gas prior to the 2006-2007 winter season. As a result of the merger,

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<sup>33</sup> The Columbia Energy Service Agreement will include an exhibit that sets forth the security required of Columbia Energy, consistent with the provisions of the Settlement Tariff that apply when a pipeline facility has been constructed to serve a shipper.

SCG's facilities and operations will be transferred to Carolina Gas and, therefore, there will no longer be a need for the Commission to review separately the costs and revenues of SCG.

#### **VII. REQUEST FOR SHORTENED PROCEDURE**

Applicants request that this application be disposed of in accordance with the shortened procedures provided by Rules 710, 801, and 802 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.710, 385.801, and 385.802. Pursuant to Rule 710 of the Commission's regulations, Applicants hereby request that the intermediate decision procedure be omitted and waive hearing and the opportunity for filing exceptions to the decision of the Commission, but reserve the right to apply to the Commission for rehearing and to petition for judicial review of the Commission's decision if this application is heard under the shortened procedure provided for by the Commission's regulations, particularly Rules 801 and 802 thereof.

As previously explained, Applicants desire that Carolina Gas begin interstate service pursuant to Commission jurisdiction in time for the 2006-2007 winter. In order to allow sufficient time to ensure an orderly transition of the upstream assets, particularly storage assets that will be needed by customers for the 2006-2007 winter, Applicants request the Commission to issue its order on or before July 31, 2006 granting the authorizations requested herein.

#### **VIII. REQUEST FOR COMMENT SCHEDULE**

Because this filing requests certificate and other authorizations for the proposed merger and also requests approval of the Settlement Agreement supporting the merger and requested authorizations, Applicants request that the Commission establish one comment schedule that provides for comments to both this SCA and the offer of settlement, as reflected in the form of notice included with this filing. Applicants request that the Commission notice issued in

response to this filing establish: (1) a deadline for initial comments to the offer of settlement and for comments, interventions and protests to the SCA 30 days from the date of this filing, and (2) a deadline for reply comments on the offer of settlement, if needed, 40 days from the date of this filing. This proposal accommodates the comment schedule for offers of settlement provided in Rule 602, which provides that initial comments be filed within 20 days of the filing of an offer of settlement and that reply comments be filed within 30 days of the filing of an offer of settlement, unless otherwise provided by the Commission,<sup>34</sup> with the Commission's practice of setting comment deadlines for NGA Section 7 applications approximately 30 days from the date of filing.

Applicants believe that the requested comment schedule is appropriate to provide a framework for the submission of initial and reply comments. However, in the event that no initial comments are filed or no initial comments are filed in opposition to the Settlement Agreement or SCA, Applicants request that the Commission waive the deadline for reply comments in order to expedite its consideration of the Settlement Agreement and SCA.

#### **IX. FILING REQUIREMENTS**

Pursuant to Rule 2011, 18 C.F.R. § 385.2011, Applicants are making this filing in electronic format, and the undersigned certifies that the paper copy contains the same information as the electronic filing.

A form of notice suitable for publication in the *Federal Register* is attached hereto and a CD-ROM is enclosed containing such notice.

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<sup>34</sup> 18 C.F.R. § 385.602(f)(2).

## **X. STATEMENT OF ISSUES**

Pursuant to Section 385.203(a)(7) and Order No. 663, 112 FERC ¶ 61,297, Applicants request that the Commission confirm that:

1. A certificate of public convenience and necessity should be issued authorizing Applicants to do all that is requested in this SCA, including: (a) the merger of SCG and SCPC to form a single, integrated interstate pipeline, subject to Commission jurisdiction, to be operated by Carolina Gas, the entity to be formed as a result of the merger; (b) the provision of jurisdictional services by Carolina Gas pursuant to the Settlement Rates and Settlement Tariff; (c) the abandonment of SCG's FERC-certificated facilities through merger and the cancellation of its FERC Gas Tariff and any other authorizations granted by the Commission, all as more fully described herein.
2. It is in the public convenience and necessity to grant Carolina Gas a blanket certificate authorizing Carolina Gas to transport gas on behalf of others pursuant to Subpart G, Section 284.221 of the Commission's regulations; and a blanket certificate authorizing certain construction and operation of facilities and abandonments under NGA Section 7 pursuant to Subpart F, Sections 157.201-218 of the Commission's regulations.
3. The Settlement Agreement is a fair and reasonable resolution of the issues associated with the requests for authorizations contained in this SCA, is in the public interest and is approved without modification or condition.
4. Carolina Gas is authorized to make a permanent, one-time assignment of capacity held by SCPC pursuant to Transco Rate Schedule GSS.
5. The PEG/Carolina Gas service agreement is accepted without modification.
6. The requirement that SCG file a cost and revenue study is waived.

## **XI. REQUIRED ATTACHMENTS**

- A. *Form of Notice*
- B. *Exhibits*

This application is abbreviated pursuant to Section 157.7(a) of the Commission's regulations. The information required by Sections 157.14, 157.16 and 157.18 of the

Commission's regulations is attached hereto as exhibits. Any information omitted and the reason for such omission is indicated below:

1. Exhibit A Articles of Incorporation and Bylaws
2. Exhibit B State Authorization
3. Exhibit C Company Officials
4. Exhibit D Subsidiaries and Affiliation
5. Exhibit E Other Pending Applications and Filings
6. Exhibit F Location of Facilities
7. Exhibit F-I Environmental Report

Resource Reports 2 through 13 are omitted. Exhibit F-I requirements are not applicable because no construction, replacement or physical abandonment of facilities is being proposed as part of the merger of SCG into SCPC to create Carolina Gas and the conversion of SCPC from Hinshaw status to NGA-jurisdictional status.<sup>35</sup> Applicants are nevertheless providing various environmental data to the Commission to provide the Staff with an understanding of SCPC's pre-existing facilities and operations.

8. Exhibit G Flow Diagrams Showing Daily Design Capacity and Reflecting Operation With and Without Proposed Facilities Added
9. Exhibit G-I Flow Diagrams Reflecting Maximum Capabilities
10. Exhibit G-II Flow Diagram Data
11. Exhibit H Total Gas Supply Data
12. Exhibit I Market Data
13. Exhibit K Cost of Facilities

<sup>35</sup> This is consistent with the Commission's treatment of Section 7 applications where no construction is proposed. See, e.g., *Chandeleur Pipe Line Company*, 107 FERC ¶ 61,162 (2004) (approving acquisition of an offshore gathering company and making it part of Chandeleur's interstate pipeline system and finding that the transaction qualified for a categorical exclusion under § 380.4(a)); *Equitrans, L.P.*, 104 FERC ¶ 61,008 at P 37 (2003) (approving merger of interstate pipelines and finding an environmental review not necessary because facilities were abandoned by sale through the merger and no construction was required).

14. Exhibit L Financing<sup>36</sup>
15. Exhibit M Construction, Operation, and Management
16. Exhibit N Revenues-Expenses-Income
17. Exhibit O Depreciation and Amortization
18. Exhibit P Tariff
19. Exhibit Q Effect of Acquisition on Existing Contracts and Tariffs
20. Exhibit R Acquisition Contracts
21. Exhibit S Accounting
22. Exhibit T Related Applications
23. Exhibit U Contracts and Other Agreements
24. Exhibit V Flow Diagram Showing Daily Design Capacity and Reflecting Operation of Applicant's System After Abandonment
25. Exhibit W Impact on Customers Whose Service Will Be Terminated
26. Exhibit X Effect of the Abandonment on Existing Tariffs
27. Exhibit Y Accounting Treatment of Abandonment
28. Exhibit Z Location of Facilities

## **XII. CONCLUSION**

WHEREFORE, for the foregoing reasons, Applicants respectfully request that the Commission:

- (1) approve the Settlement Agreement in its entirety, without condition or modification;
- (2) grant a certificate of public convenience and necessity, as proposed herein, to permit the merger of SCG and SCPC to form a single, integrated interstate pipeline subject to the jurisdiction of the Commission, Carolina Gas, which company shall hold the certificate;

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<sup>36</sup> Consistent with the data that formed the basis for the parties' negotiation of the Settlement Agreement, the balance sheet and income statements included in Exhibit L are based on June 30, 2005 data, as adjusted. To the extent necessary, Applicants request any necessary waivers of the Part 157 filing requirements.

(3) authorize Carolina Gas to operate the merged facilities and provide the services proposed herein at initial rates set forth herein based on the Settlement Agreement and pursuant to the Settlement Tariff agreed upon as part of the Settlement Agreement and proposed herein;

(4) grant a certificate of public convenience and necessity, as proposed herein, for the abandonment through merger of SCG's FERC-certificated facilities and the cancellation of its FERC Gas Tariff, and any other authorizations granted to SCG by the Commission;

(5) authorize a blanket certificate to Carolina Gas to transport gas on behalf of others pursuant to Subpart G, Section 284.221;

(6) authorize a blanket certificate to Carolina Gas allowing certain construction and operation of facilities and abandonments under NGA Section 7 pursuant to Subpart F, Sections 157.201-218 of the Commission's regulations;

(7) authorize the permanent, one-time assignment of capacity held by SCPC pursuant to Transco Rate Schedule GSS;

(8) accept the PEG/Carolina Gas service agreement without modification;

(9) waive the requirement that SCG file a cost and revenue study;

(10) establish the comment deadlines as requested herein;

(11) issue a final order on or before July 31, 2006, granting all authorizations sought herein;

(12) grant any waivers of the Commission's regulations or policies needed for such relief or for issuance of the certificates, determinations, orders, and approvals requested in this joint application; and

(13) grant all other and further relief as is warranted, necessary, and appropriate under the circumstances described herein.

Respectfully submitted,

Carolina Gas Transmission Corporation,  
SCG Pipeline, Inc., South Carolina  
Pipeline Corporation

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Dated: February 27, 2006



**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY ENERGY COMMISSION**

	)	
<b>Carolina Gas Transmission Corporation</b>	)	
<b>SCG Pipeline, Inc.</b>	)	<b>Docket Nos. CP06-71-000,</b>
<b>South Carolina Pipeline Corporation</b>	)	<b>CP06-72-000 and CP06-73-000</b>
	)	
	)	

**COMMENTS**

Pursuant to the Notice issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”) on March 3, 2006, the South Carolina Office of Regulatory Staff (“ORS”) submits these Comments on the “Settlement and Certificate Application” or “SCA” in the above captioned proceeding.

**I. Summary**

On February 27, 2006, SCG and SCPC (the “Applicants”) filed an abbreviated joint application to accept offer of settlement and for a Certificate of Public Convenience and Necessity authorizing facilities acquisition and operation, the provision of jurisdictional services, and abandonment, and for blanket certificates (hereinafter referred to as “Settlement and Certificate Application” or “SCA”). The Settlement and Certificate Application requests all certificate and other authorizations necessary to permit: (1) the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to FERC jurisdiction to be called Carolina Gas Transmission Corporation (“Carolina Gas”); (2) the operation of such interstate pipeline by Carolina Gas, the entity to be formed as a result of the merger; (3) the provision of jurisdictional services by Carolina Gas pursuant

to the settlement initial rates and the settlement *pro forma* FERC Gas Tariff; and (4) the abandonment by SCG of its FERC certificated facilities through merger and the cancellation of its FERC Gas Tariff and any other authorizations granted by the Commission. The Applicants assert that the vast majority of the customers have agreed to the proposed settlement.<sup>1</sup>

Additionally, SCPC and SCG further request that the Commission grant Carolina Gas a blanket certificate authorizing Carolina Gas to transport gas on behalf of others pursuant to Subpart G, Section 284.221 of the Commission's regulations; and a blanket certificate authorizing certain construction and operation of facilities and abandonments under NGA Section 7 pursuant to Subpart F, Sections 157.201-218 of the Commission's regulations.

On March 13, 2006, ORS filed a Notice of Intervention/Motion to Intervene. ORS was concerned and remains concerned that the merger will increase consumer rates, but based upon the information obtained by ORS, believes there are also benefits to the proposed merger and settlement. The primary benefit of the merger is the removal of the opportunity for affiliate abuse.<sup>2</sup> Indeed, the principle reason for the merger is the Commission's April 27, 2005, Order Approving Stipulation and Consent Agreement, wherein the Commission reached a settlement with South Carolina Electric & Gas Company ("SCE&G"), SCG, SCPC, and SCANA Services, Inc., that requires SCG and SCPC to combine into a single open access interstate pipeline to prevent possible future

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<sup>1</sup> Settlement and Certificate Application at pages 8-9.

<sup>2</sup> On March 3, 2004, the NCUC concluded in a case involving Public Service Company of North Carolina and SCANA that the potential for affiliate abuse is relatively small compared to the efficiencies gained due to centralization of the gas procurement function.

Standards of Conduct violations.<sup>3</sup> If SCG and SCPC do not merge, SCPC will seek approval for a rate increase from the South Carolina Public Service Commission and SCPC and SCE&G will face increased administration and operating costs to comply with the Commission's April 27, 2005, Order. Additional benefits of the merger include (i) economic growth, (ii) greater diversity in access to natural gas supply, and (iii) greater asset management options.

**Economic Growth.** The rates for most firm and all interruptible industrial customers will be less than the current standard SCPC industrial rates. Businesses that are evaluating whether to locate their operations to South Carolina will be able to more easily compare interstate pipeline gas transportation rates. Further, the expansion of the interstate pipeline access to Elba Island LNG supplies will enhance economic development throughout South Carolina. The City of Orangeburg is a sale for resale customer of SCPC, and a representative of the city confirmed to ORS that the city supports the merger. The city representative pointed out that, in his opinion, the potential for expansion along the I-95 corridor exists once the merger is completed. The introduction of additional pipeline growth along the I-95 corridor improves industrial and commercial opportunities for the state. Today, the capacity at Elba Island is .5 billion cubic feet per day (BCF) but future capacity will be 2 BCF per day.

**Diversity.** SCE&G will be able to buy at three supply points as opposed to only two. In the event of a hurricane or other disruption to the supply, with access to three separate supply points, SCE&G will have greater redundancy to insure native load

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<sup>3</sup> Between 1999 and September 21, 2004, the Commission's Division of Enforcement, Office of Market Oversight and Investigations, conducted a non-public investigation of SCANA subsidiaries for alleged violations of the Standards of Conduct, the Commission's Capacity Release Policies, and the Commission's Shipper Must Have Title Policy as well as alleged preferential gas sales between affiliates.

requirements are met. Attachment A is a map illustrating the increased number of supply points.

**Asset Management.** As a result of the merger, certain restrictions on a bundled system will no longer apply such that customers of Carolina Gas will have greater flexibility to manage their natural gas supply tailored to meet their unique individual needs. Term deals, fixed pricing, access to emergency gas, daily pricing, individual hedging programs, and the ability to coordinate purchasing strategies with facilities in other locations are some of the new benefits to customers of Carolina Gas. Customers will also be able to participate in upstream capacity release transactions. To the extent SCE&G is able to optimize its capacity release sales, the smaller the financial impact to the rate payer. Generally, the increased competition among suppliers means lower prices; facilitates development of innovative products; and promotes better intra-company transportation capacity utilization on a fleet basis.

The ORS is charged by law with the duty to represent the public interest of South Carolina pursuant to S.C. Code § 58-4-10 (B) (added by Act 175). S.C. Code § 58-4-10(B)(1) through (3) read in part as follows:

...‘public interest’ means a balancing of the following:

- (1) concerns of the using and consuming public with respect to public utility services, regardless of the class of customer;
- (2) economic development and job attraction and retention in South Carolina; and
- (3) preservation of the financial integrity of the State’s public utilities and continued investment in and maintenance of utility facilities so as to provide reliable and high quality utility services.

Upon balancing the interests of the consumers, economic development, and the public utilities, the rate increase caused by the merger is outweighed by the avoided costs of maintaining SCG and SCPC as separate companies and by the benefits described above. ORS will continue to be active in rate cases before the South Carolina Public Service Commission to ensure that synergies resulting from the merger flow through to SCE&G rate payers.

To summarize, based upon the information obtained by ORS, benefits of the merger include removal of the opportunity for affiliate abuses, economic growth, diversity of natural gas supply, and asset management.

## **II. Conclusion**

ORS supports the proposed merger and settlement based upon the information contained in the application and based upon information obtained by ORS.

Respectfully submitted,

/s/ Nanette S. Edwards

Counsel for the South Carolina  
Office of Regulatory Staff

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March 31, 2006

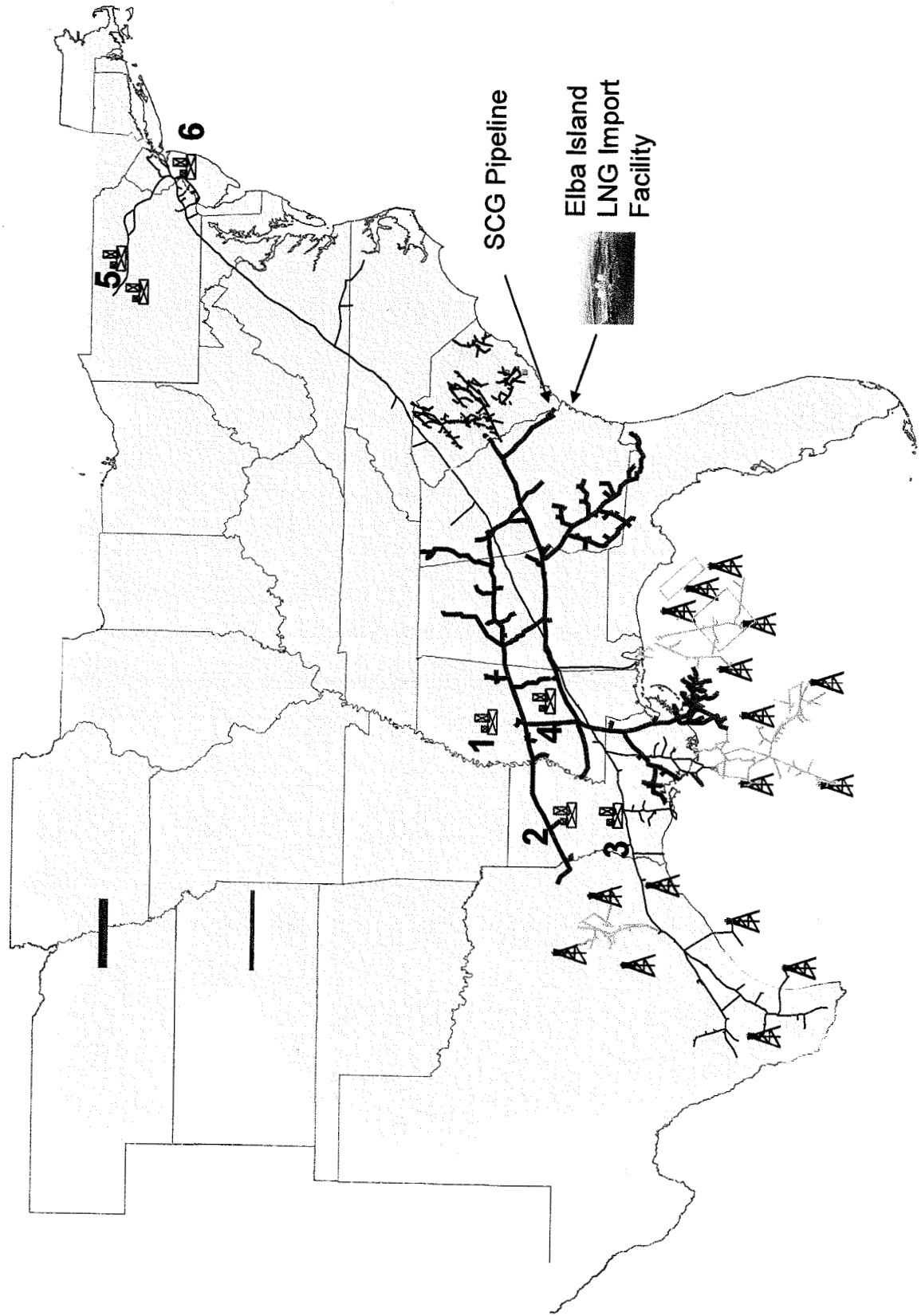
**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 2010 of the Commission's regulations, 18 C.F.R § 385.2010 I have this day served the foregoing Comments upon each person designated on the official service list compiled by the Secretary in this proceeding electronically or via U.S. Mail.

Dated this 31<sup>st</sup> day of March, 2006.

By: /s/ Nanette S. Edwards  
Staff Attorney  
South Carolina Office of  
Regulatory Staff  
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# ATTACHMENT A





**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Carolina Gas Transmission Corporation	)	
SCG Pipeline, Inc.	)	Docket No. CP06-____-000
South Carolina Pipeline Corporation	)	

**EXPLANATORY STATEMENT**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.602 (2005), SCG Pipeline, Inc. ("SCG") and South Carolina Pipeline Corporation ("SCPC"), for themselves and on behalf of Carolina Gas Transmission Corporation ("Carolina Gas") (collectively "Pipelines"), submit this Explanatory Statement in support of the Stipulation and Agreement ("Settlement Agreement") submitted as an integrated and comprehensive offer of settlement of the issues associated with their Abbreviated Joint Application To Accept Offer of Settlement And For A Certificate Of Public Convenience And Necessity Authorizing Facilities Acquisition And Operation, The Provision Of Jurisdictional Services, And Abandonment, And For Blanket Certificates ("Settlement and Certificate Application" or "SCA"), which the Pipelines also are filing today. In the SCA, the Pipelines request all Commission authorizations necessary to permit the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to the jurisdiction of the FERC. The resulting, merged entity will be Carolina Gas. Nothing in this Explanatory Statement will control or otherwise affect the interpretation or meaning of the Settlement Agreement or any other document.

As described more fully in the Settlement Agreement and the SCA, the Settlement Agreement is the product of extensive efforts by the Pipelines and their customers. As a part of the Settlement Agreement, the parties listed on Attachment 1 to the Settlement Agreement

("Customers")<sup>1</sup> are to execute Rate Schedule FT Transportation Agreements in the form of service agreement included in the *pro forma* settlement FERC Gas Tariff included with the SCA ("Service Agreement"). Customers' Service Agreements shall include the MDTQ amount set forth in Attachment 3 to the Settlement Agreement and the allocation amount set forth in Attachment 2 to the Settlement Agreement, both as explained more fully below.

As part of the settlement, all but two of the Customers listed on Attachment 1 are to enter into three-year firm transportation service agreements. As explained more fully below, the two exceptions are customers that will continue long-term arrangements that substantially exceed a three-year term. The Settlement Agreement is a negotiated resolution of the issues associated with the Settlement and Certificate Application. The Settlement Agreement includes settlement initial rates ("Settlement Rates") and a *pro forma* settlement FERC Gas Tariff ("Settlement Tariff"), incorporated by reference to Exhibit P of the SCA.

## **ARTICLE I BACKGROUND**

As explained in Article I, SCG is an interstate pipeline and a "natural-gas company" within the meaning of Section 2(6) of the Natural Gas Act ("NGA")<sup>2</sup> subject to the Commission's jurisdiction. SCG commenced operations in November 2003, pursuant to

<sup>1</sup> The Pipelines have not listed Columbia Energy LLC ("Columbia Energy") on Attachment 1 because on December 20, 2005, Columbia Energy and its parent, Calpine Corporation ("Calpine"), filed voluntary petitions to restructure under Chapter 11 of the United States Bankruptcy Code. Columbia Energy actively participated in the early stages of the settlement conferences and negotiations. However, after December 20, 2005, it abstained from the settlement offers made by the Customers during the negotiations. Many issues face Calpine and Columbia Energy during their restructuring and Columbia Energy has not yet made a determination under the Bankruptcy Code as to whether it will assume or reject the contracts that relate to its South Carolina plant, including its transportation contract with SCPC. That transportation contract provides that Columbia Energy will continue receiving transportation service if SCPC becomes an interstate pipeline. Because Columbia Energy has not yet made a determination as to whether it will assume or reject the SCPC transportation contract, the Pipelines did not list Columbia Energy on Attachment 1. Facing this uncertainty, the parties have allocated the risks of contract rejection or renegotiation as equitably as possible in the Settlement Agreement. The Pipelines do not anticipate that Columbia Energy will comment adversely on the Settlement Agreement and, provided that is the case, the Pipelines do not intend to treat Columbia Energy as a Contesting Party under Article VIII of the Settlement Agreement.

<sup>2</sup> 15 U.S.C. § 717a(6) (2000).

Commission authorization. *See Southern Natural Gas Company, SCG Pipeline, Inc.*, 99 FERC ¶ 61,345 (2002); 100 FERC ¶ 61,284 (2002) (Order Issuing Certificates, Approving Abandonment and Denying Rehearing).

SCPC serves South Carolina markets through its 1400-mile web of transmission lines. SCPC serves 11 sale for resale customers and 47 industrial customers. Pursuant to rates, terms and conditions approved by the Public Service Commission of South Carolina, SCPC provides bundled sales/transportation service to its customers. SCPC also provides, on a limited basis, an experimental transportation-only service approved by the South Carolina Commission. For these reasons, SCPC's transition to interstate service raises many of the same considerations that arose in the Order No. 636<sup>3</sup> restructuring process: the unbundling of existing services; the termination of the pipeline's merchant sales function; the transition to open access, transportation-only service; the use of straight fixed variable ("SFV") cost allocation and rate design; and the assignment of contracts for upstream transportation capacity.

Consistent with the Commission's policy on settlements, and the encouragement it has offered to jurisdictional entities to attempt to reach mutually acceptable compromises with customers before filings are submitted to the Commission, the Pipelines and their customers invested substantial time and resources in order to reach a settlement before the companies jointly filed to commence interstate service as a single pipeline. *See Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (approving settlement agreement, commending parties for negotiating their differences before making a filing at FERC, and encouraging others to act in a

<sup>3</sup> Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 1991-96 FERC Stats. & Regs., Regs. Preambles ¶ 30,939, order on reh'g, Order No. 636-A, 1991-96 FERC Stats. & Regs., Regs. Preambles ¶ 30,950 at 30,604, order on reh'g, Order No. 636-B, 61 FERC ¶ 61,272 (1992), Notice of Denial of Rehearing, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part, United Dist. Cos. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996), order on remand, Order No. 636-C, 78 FERC ¶ 61,186 (1997).

similar manner); *see also Guardian Pipeline, L.L.C.*, 114 FERC ¶ 61,112 (2006) (approving settlement agreement that included cost and revenue study as required by a previous order); *East Tennessee Natural Gas, LLC*, 113 FERC ¶ 61,099 (2005) (approving settlement agreement filed in accordance with the guidance set forth in *Dominion*).

The merger of SCG into SCPC, and the conversion of SCPC to open access interstate service, raise many of the same issues and provide substantially similar benefits for the public convenience and necessity that existed when the interstate pipeline industry moved to transportation-only service pursuant to Commission Order No. 636. The Order No. 636 transition was accomplished largely through Commission approval of pipeline and customer settlements and this history, as well as the Commission guidance described above, influenced the Pipelines to adopt a cooperative approach to the transition proposed here.

At the outset of this process, the Pipelines posted on SCG's web site substantial information about the merger and about the various aspects of the Pipelines' filing at the Commission to become a single interstate pipeline. In addition, the Pipelines made several presentations to the prospective customer group and others addressing what would be required to begin operations under FERC oversight. These presentations were augmented by numerous other communications and meetings with individual entities to answer questions and provide data and to explain further the process and what would be required of all participants.

After establishing this baseline of information, the Pipelines commenced more formal settlement discussions modeled on the template that had received Commission acceptance in *Dominion* and *East Tennessee*. The Pipelines and 43 parties, including virtually all of the Pipelines' current and expected future interstate firm customers and others, entered into confidentiality agreements to commence the pre-filing settlement process. On November 9,

2005, the Pipelines and the interested participants, as well as the agents invited by the participants, met in Columbia, South Carolina for a full day of settlement discussions. Many of these participants and their agents traveled great distances to attend the settlement conference. Prior to the November 9 settlement conference, the Pipelines had distributed to those that executed confidentiality agreements a comprehensive and integrated set of settlement principles. At the close of the November 9 settlement conference, the participants agreed to continue to pursue settlement discussions. Over the next several weeks the participants and the Pipelines continued to work toward settlement and a two-day settlement conference was convened on December 6 and 7, 2005, again in Columbia, South Carolina.

Shortly after this second conference, a unified customer counterproposal for settlement was presented to the Pipelines. Over the course of the next two months and throughout the holiday season, the participants worked to reach a fair and reasonable resolution of this entire matter, conducting further settlement discussions through telephone conferences and electronic means. On December 22, 2005, the Pipelines provided to all participants that had executed confidentiality agreements a second settlement proposal responding to the unified customers' counterproposal. The customers and the Pipelines continued to work toward settlement and on January 31, 2006, the unified customers presented the Pipelines with a second counterproposal that significantly narrowed the issues for discussion. To finalize a settlement on the remaining matters, over the next several weeks the Pipelines worked with a subgroup of customer representatives. That group consisted of over 85 percent of the firm capacity commitments on Carolina Gas (almost 95 percent of the firm commitments not counting Columbia Energy, which had abstained) and represented the diverse nature of the Pipelines' customers by including customers of both SCG and SCPC, affiliated and non-affiliated customers, investor-owned and

municipal-owned sale for resale customers and major industrial customers. During that time, several conference calls were held between the Pipelines and the customers' representatives and a final agreement on the terms of a settlement was achieved with the customers participating in the subgroup. The terms of settlement agreed upon with the subgroup customers were recommended by the subgroup representatives to the customers representing the remaining 5 percent of the participating load for their adoption. The Settlement Agreement is the result of these substantial efforts by the parties involved and represents an equitable resolution of the issues surrounding the merger and the resulting formation of Carolina Gas.

The Settlement Agreement provides support for the Commission's acceptance of the Settlement and Certificate Application. As explained in further detail in the Settlement and Certificate Application, upon Commission approval of the proposed merger, SCG will merge into SCPC. SCPC will relinquish its Hinshaw exemption and become subject to the Commission's jurisdiction over interstate pipelines. Following the merger, the resulting entity, Carolina Gas, will own and operate all of the facilities owned and operated by SCG and SCPC at the time of the merger.

## **ARTICLE II**

### **SETTLING PARTIES**

Article II of the Settlement Agreement provides that a Settling Party is any party that either (1) files no comments regarding the Settlement Agreement or the SCA; or (2) files comments that affirmatively support, or do not oppose or seek modification of any provision of the Settlement Agreement or the SCA. Article II also provides that, within five (5) days after the filing with the Commission of the Settlement Agreement and the SCA, the Pipelines will provide to each Customer listed on Attachment 1 a form of service agreement for the Customer's execution. In order to be a Settling Party, in addition to meeting one of the requirements set out

in items (1) and (2) above in this article, each Customer listed on Attachment 1 must execute the form of service agreement provided by the Pipelines as described, and within the time frame set out, in Article V of the Settlement Agreement.

**ARTICLE III  
ALLOCATION OF UPSTREAM CAPACITY AND  
SALE OF ON-SYSTEM LNG FACILITIES**

In Article III, the Pipelines and Customers agree that the Pipelines will permanently transfer upstream transportation and storage capacity currently held by SCPC in the amounts and to the customers listed in Attachment 2 to the Settlement Agreement ("Allocation Customers") pursuant to the tariff provisions of the upstream pipelines, the Commission's regulations and any necessary waivers granted by the Commission in connection with the Settlement and Certificate Application. Article III provides that the Allocation Customers will accept the permanent transfer of upstream transportation and storage capacity currently held by SCPC as set forth in Attachment 2.

With the exception of storage service that SCPC receives from Transcontinental Gas Pipe Line Corporation ("Transco") under its Rate Schedule GSS, the upstream capacity to be allocated was certificated pursuant to Part 284 of the Commission's regulations and, therefore, will be transferred pursuant to the capacity release provisions of the upstream pipelines and the Commission's regulations.

The upstream storage service that SCPC receives from Transco under its Rate Schedule GSS was certificated pursuant to Part 157 of the Commission's regulations and is ineligible for transfer through capacity release. See Order No. 636-B at 61,992. In order to permit the transfer of such capacity, the SCA requests authorization and waiver of any Commission regulations or policies to permit the permanent, one-time assignment of such capacity to the Allocation

Customers specified in Attachment 2. Upon assignment, the capacity will continue to be Part 157 capacity. The Pipelines are supported by Transco in this assignment and the SCA also requests that the Commission grant any authorization or waiver that may be needed by Transco to facilitate the assignment of capacity from SCPC to the Allocation Customers. The Pipelines and the Allocation Customers will take all actions required by the tariffs of the upstream pipelines, namely Transco and Southern Natural Gas Company, or made necessary by FERC rules, regulations and orders to make the releases effective as of the date Carolina Gas commences interstate service.

Each Allocation Customer receiving a release of upstream storage capacity will purchase a pro-rata share of SCPC's natural gas in storage at the time of the release, based on the amount of capacity released to the customer under the relevant upstream storage service (as shown on Attachment 2 to the Settlement Agreement) as compared to the total amount of capacity released under that storage service. For each upstream storage service released, the unit price for the gas purchased will be equal to SCPC's weighted average cost, at the time of the release, of the gas stored pursuant to the applicable storage service.

No service from on-system facilities for the liquefaction, storage and regasification of natural gas will be allocated to customers. These facilities are not included in the assets that are the subject of the Settlement and Certificate Application and will not be included in Carolina Gas' rate base. Before Carolina Gas is formed by the merger of SCG into SCPC and Carolina Gas commences interstate operations, these assets will be acquired by South Carolina Electric and Gas Company for its retail natural gas distribution service.



#### **ARTICLE IV**

#### **SETTLEMENT RATES**

Article IV describes the Settlement Rates for Carolina Gas services, which are set out in Attachment 3 to the Settlement Agreement. The rate derivation and relevant data supporting these Settlement Rates are provided as part of Exhibit P to the SCA. The Pipelines and Customers agree that these Settlement Rates are based on the following: (1) an overall cost of service of \$50.6 million; (2) an overall after-tax rate of return of 9.08 percent derived from a 12.7 percent return on equity ("ROE"), a 5.46 percent cost of debt, and a capital structure of 50 percent debt and 50 percent equity; (3) zone of delivery rates, with two zones, based on SFV cost allocation and rate design; (4) a discount adjustment based on the contract with Patriots Energy Group; (5) billing determinants based on the contract quantities listed on Attachment 3 to the Settlement Agreement, taking into consideration the discount adjustment referenced above; (6) depreciation and amortization rates listed on Attachment 4 to the Settlement Agreement; and (7) agreed upon expense and rate base compromises as reflected in Exhibit P to the SCA.

Attachment 3 to the Settlement Agreement sets out the initial fuel retainage percentages for deliveries in Zones 1 and 2. Fuel retainage percentages will be revised from time to time as provided in the Settlement Tariff. See Section 25 of Settlement Tariff included with Exhibit P to SCA.

Carolina Gas Zone 2 consists of the current SCG interstate system. SCG has one firm customer, SCANA Energy Marketing, Inc. ("SEMI"), an affiliate of the Pipelines. The settlement cost allocation and rate design results in a substantial increase in rates for this customer for deliveries in Zone 2. The Settling Parties have agreed to mitigate the severity of this increase by limiting it to 15 percent above SEMI's current rates. The Zone 2 reservation

charge reflects this mitigation. These mitigated costs will be spread among the Zone 1 billing determinants.

Carolina Gas Zone 1 consists of the current SCPC intrastate system. For the months of May through October, eligible customers will receive mitigation with respect to a portion of their Rate Schedule FT capacity through a reduction of their Maximum Daily Transportation Quantity ("MDTQ") during those months. The eligible customers and the total amount of mitigation for each are set forth in the Settlement Agreement. Mitigation is appropriate for sale for resale customers with residential and commercial load previously served by SCPC because of the changes necessary to bring the former SCPC services in compliance with Commission policies set forth in Order No. 636, including SFV rate design. As was the case in proceedings following Order No. 636, the Settlement Agreement includes a fair level of mitigation for these sale for resale customers.

The reduction in billing determinants described above would result in a higher reservation rate. Carolina Gas will share in this rate effect equally with the Customers by eliminating from the calculation of rates 50% of the costs that would be shifted due to this reduction in billing determinants. This results in \$710,787 in annual costs being eliminated from the Zone 1 reservation charge. Carolina Gas will have the opportunity to recover the annual cost of service amount of \$710,787 through the sale of interruptible transportation service and short-term Rate Schedule FT service. After Carolina Gas has recovered the \$710,787 through such sales, Carolina Gas shall share any additional revenues from such sales with Customers in proportion to the total revenues paid by each Customer under Rate Schedule FT to the total revenues received by Carolina Gas under Rate Schedule FT during the accrual period, pursuant to Section 28 of the Settlement Tariff. Carolina Gas will make a filing with the Commission

each year in conjunction with its interruptible transportation revenue sharing mechanism, as set forth in Section 28 of the Settlement Tariff, setting out how much, if any, of the \$710,787 Carolina Gas has recovered and further setting out any amounts recovered over the \$710,787. Carolina Gas shall not be required to pay interest on such credits. Any amount of the \$710,787 that is not recovered by Carolina Gas during an annual recovery period shall not be eligible for recovery in a subsequent annual recovery period.

Mitigation will remain in effect pursuant to the Settlement Agreement until Carolina Gas' next NGA Section 4 general rate case filing. The timing and content of such filing will be at the sole discretion of Carolina Gas. Carolina Gas may file such rate case without mitigation or may file to continue mitigation. Customers will have the right to take whatever positions they deem appropriate with respect to Carolina Gas' filing. In its filing, Carolina Gas will bear the burden of proof under NGA Section 4 to establish the justness and reasonableness of its position on mitigation, whether its filing retains, modifies or eliminates the mitigation provisions of the Settlement Agreement.

As part of the Settlement Agreement, Carolina Gas will cap its depreciation rates at the settlement levels in its next NGA Section 4 rate case, if such case is filed to make rates effective prior to October 1, 2010; provided, however, if an NGA Section 5 proceeding is initiated against Carolina Gas before Carolina Gas makes such a Section 4 filing, Carolina Gas' obligation to cap depreciation rates is terminated. The agreement to cap depreciation rates does not apply to amortization rates on intangible plant.

#### **ARTICLE V**

#### **CONTRACT MATTERS**

Article V explains the procedure by which the Pipelines will send each Customer listed on Attachment 1 a Rate Schedule FT Transportation Agreement in the form of service agreement

included in the Settlement Tariff ("Service Agreement") within five (5) business days after the filing of the Settlement Agreement and the SCA with the FERC. With the exception of longer-term agreements discussed below, the Service Agreements will be for three-year terms with the MDTQ amounts set forth in Attachment 3 to the Service Agreement. Each Customer's Service Agreement will include an exhibit setting forth that Customer's allocation of upstream capacity as shown in Attachment 2 to the Service Agreement. Pursuant to Article III of the Settlement Agreement, Customers will accept the assignment of such upstream capacity.

Prior to the deadline for filing comments regarding the Settlement Agreement, as established by Commission notice ("Comment Date"), Customers will execute and return to the Pipelines their Service Agreements.<sup>4</sup> A Customer that does not execute and return to the Pipelines its Service Agreement, as provided in the Settlement Agreement by the Comment Date, will be deemed a Contesting Party subject to Article VIII of the Service Agreement. Customers deemed Contesting Parties as a result of not executing Service Agreements will be ineligible to receive service at the Settlement Rates and will be subject to the Alternate Rates as set forth in Article VIII of the Settlement Agreement.<sup>5</sup> The Pipelines will notify the Commission within five (5) business days following the Comment Date of any Customers that did not execute and return Service Agreements and, therefore, have become Contesting Parties.

Article V explains that there are three customers that are committed to longer-term agreements. Within the time period set out above, SEMI will enter into a Service Agreement,

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<sup>4</sup> In the SCA, the Pipelines request that the Commission establish: (1) a deadline for initial comments to the offer of settlement and for comments, interventions and protests to the SCA 30 days from the date that the offer of settlement and SCA are filed, and (2) a deadline for reply comments on the offer of settlement, if needed, 40 days from the date that the offer of settlement and SCA are filed.

<sup>5</sup> Due to its unique situation, as discussed in footnote 1, Columbia Energy will not become a Contesting Party by virtue of not executing a Service Agreement prior to the deadline for initial comments. However, Columbia Energy may become a Contesting Party if it files adverse comments as set forth in Article VIII.

with a primary term ending October 31, 2023. This primary term matches the primary term in SEMI's existing transportation agreement with SCG.

The Carolina Gas Service Agreement with the Patriots Energy Group ("PEG") is a discount contract with a primary term ending March 31, 2018. The PEG contract is a continuation of the arrangement that PEG had negotiated with SCPC reflecting PEG's intention to bypass SCPC unless a discount was offered. The PEG Service Agreement is based on the form of service agreement included in the Settlement Tariff, but is filed for the Commission's review and approval as part of Exhibit I to the SCA because Exhibit C to that agreement would represent a deviation from Carolina Gas' form of service agreement if not for the tariff provision referenced below that the Pipelines have included in the Settlement Tariff. Exhibit C to that agreement sets out PEG's right to increase its MDTQ in the future under certain circumstances. This provision is similar to the provisions addressed by the Commission in *Northern Natural Gas Company*, 111 FERC ¶ 61,287, *reh'g denied*, 113 FERC ¶ 61,119 (2005) (finding agreement with load growth option to be in conformance with tariff amendments making such option generally available), *appeal docketed*, No. 05-1468 (D.C. Cir. Dec. 27, 2005); *Northern Natural Gas Company*, 111 FERC ¶ 61,141 (2005) (accepting tariff provisions that made load growth option generally available to all Northern customers); *Northern Natural Gas Company*, 110 FERC ¶ 61,321, *reh'g denied*, 111 FERC ¶ 61,379, *reh'g denied*, 113 FERC ¶ 61,188 (2005) (requiring Northern to place load growth option in its tariff to make it generally available to all shippers), ), *appeal docketed*, No. 06-1016 (D.C. Cir. Jan. 12, 2006). Consistent with that Commission precedent, the Settlement Tariff includes a provision that makes such a right generally available to all customers under similar conditions. *See Settlement Tariff at Exhibit P*

to the SCA, Rate Schedule FT, Section 2.6. PEG will execute this Service Agreement within the time period set out above.

Also included for the Commission's review as part of Exhibit I to the SCA is a form of transportation service agreement representative of the service agreement that Carolina Gas and Columbia Energy would enter into as provided in Columbia Energy's existing agreement for firm transportation service with SCPC. In that existing agreement the parties had anticipated SCPC's conversion to open access interstate service and had provided that their arrangement would continue under this Commission's jurisdiction for a primary term ending February 29, 2024. The contract provided in Exhibit I to the SCA for information purposes is based on Carolina Gas' form of service agreement and the Pipelines do not believe that the contract materially deviates from that form.<sup>6</sup>

#### **ARTICLE VI** **SETTLEMENT RATE MORATORIUM**

In Article VI, Carolina Gas agrees that it will not file an NGA Section 4 general rate case for the purpose of placing rates into effect before October 1, 2009, or three years after the commencement of service by Carolina Gas, whichever is earlier ("Moratorium Period"). The Moratorium Period is subject to the following condition: if Columbia Energy rejects its service agreement with Carolina Gas at any time prior to or during the Moratorium Period, the Moratorium Period will automatically be reduced to two years, in which case Carolina Gas will not make an NGA Section 4 general rate case filing that would result in new rates taking effect before October 1, 2008, or two years after commencement of service by Carolina Gas, whichever

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<sup>6</sup> The Columbia Energy form of service agreement will include an exhibit that sets forth the security required of Columbia Energy, consistent with the provisions of the Settlement Tariff that apply when a pipeline facility has been constructed to serve a shipper.

is earlier. Carolina Gas may file a Section 4 general rate case during the Moratorium Period in response to a Section 5 proceeding ordered by the FERC.

During the effectiveness of the Moratorium Period, no Settling Party will (1) file or (2) support, either directly or indirectly, the filing and prosecution of an NGA Section 5 case with respect to the matters provided for in the Settlement Agreement. Carolina Gas is not precluded from filing unilaterally at any time additional Rate Schedules with additional services and associated rates. Settling Parties retain the right to take whatever positions they deem appropriate in any such filing made by Carolina Gas. Carolina Gas does not have an obligation to file an NGA Section 4 general rate case at any specified future time as a result of the Settlement Agreement.

#### **ARTICLE VII** **TARIFF MATTERS**

Article VII provides that a copy of the Carolina Gas *pro forma* Settlement Tariff, which incorporates the provisions of the Settlement Agreement, is included in Exhibit P to the SCA. The Settlement Tariff is agreed upon by the Settling Parties as part of the Settlement Agreement.

Carolina Gas will have the right to make tariff changes during the term of the Settlement Agreement so long as such tariff changes are not inconsistent with the matters addressed in Articles III, IV, V and VI of the Settlement Agreement. Such tariff change filings by Carolina Gas, however, will not limit in any way the right of any party or the Commission to take whatever position is deemed appropriate with respect to such tariff changes proposed by Carolina Gas.

#### **ARTICLE VIII** **CONTESTING PARTIES AND SEVERANCE OF PARTIES**

Article VIII explains that any party that files comments opposing or requesting modifications that are not acceptable to the Pipelines and the Settling Parties regarding any part

of the Settlement Agreement or the Settlement and Certificate Application, will be considered a Contesting Party.

The Commission may determine that the Settlement Agreement will apply to a Contesting Party and, if the Commission makes that determination, such Contesting Party will be deemed to be a Settling Party under the Settlement Agreement. However, Customers that become Contesting Parties by not executing their Service Agreements in the manner and in the time period set out in Article V of the Settlement Agreement will be ineligible to receive service at the Settlement Rates.

If a Contesting Party is severed from the Settlement Agreement pursuant to a Commission order to enable such Contesting Party to separately litigate and/or otherwise contest issues in this proceeding without delaying the implementation of the Settlement Agreement for the Settling Parties, such Contesting Party will be entitled to only such rate and other relief as is ultimately determined appropriate by the Commission in a final, nonappealable order establishing the outcome of this proceeding with respect to such party.

The Pipelines include as part of the Settlement and Certificate Application, alternate initial rate sheets ("Alternate Rates") that will apply to Contesting Parties. See Exhibit P to the SCA. The expenses and facilities costs that underlie the Alternate Rates are taken from the books and records of the two merging pipelines, with *pro forma* adjustments to reflect SCPC's exit from the merchant business and its conversion to interstate transmission-only service.

The Settlement Rates and the Alternate Rates are derived on the same basis, with three principal differences. First, certain rate base and expense items were the subject of compromise for settlement purposes in the calculation of the Settlement Rates as indicated in Article IV of the Settlement Agreement. The Alternate Rates do not include these compromises. See Exhibit P to



the SCA. Second, the Settlement Rates incorporate a 12.7 percent ROE. The Alternate Rates incorporate an ROE of 14 percent.

The third principal difference between the Alternate Rates and the Settlement Rates concerns the billing determinants for Columbia Energy included in the rate calculation. Columbia Energy has a long-term transportation contract with SCPC, which provides that Columbia Energy will continue to receive transportation service from the pipeline if it converts to interstate service. As discussed in footnote 1, Columbia Energy has not yet made the election afforded it under the Bankruptcy Code regarding whether to reject its contract for future transportation service from Carolina Gas. Based on experience, Carolina Gas estimates that if Columbia Energy rejects its contract with SCPC, the firm capacity contracted for on Carolina Gas related to Columbia Energy's South Carolina plant may be as low as 12,000 Dth per day. The Alternate Rates are based on billing determinants associated with the Columbia Energy plant set at the 12,000 Dth per day level. The Settlement Rates are based on billing determinants for Columbia Energy of 70,000 Dth per day, reflecting Carolina Gas' agreement in the Settlement to accept the risk during the Moratorium Period that it will have rates in effect set at a billing determinant level that could be more than 55,000 Dth per day higher than the actual level.

#### **ARTICLE IX**

#### **IMPLEMENTATION OF SETTLEMENT AGREEMENT**

Article IX of the Settlement Agreement provides that it will become effective upon an order granting the Settlement and Certificate Application in a manner acceptable to the Pipelines and either (1) approving, without modification or condition, all of the terms and provisions of the Settlement Agreement, or (2) modifying or conditioning the Settlement Agreement in a manner that is acceptable to the Pipelines and the Settling Parties. If the Commission issues an order granting the SCA in a manner unacceptable to the Pipelines or modifying or conditioning the

Settlement Agreement in a manner unacceptable to the Pipelines or the Settling Parties, the Pipelines and Settling Parties will have five (5) business days from the issuance of such order or orders to file with the Commission and provide written notice to the parties that the Commission's order on the SCA or its modification or condition to the Settlement Agreement is unacceptable. Such written notice must be filed with the Commission and received by the Pipelines and Settling Parties by 5:00 p.m. on the fifth business day and may be transmitted by electronic means. If such notice is given, the Pipelines and Settling Parties will cooperate to file a rehearing request with the Commission and otherwise attempt to resolve the matter. If no such written notice is given, the Pipelines and Settling Parties agree to be bound by the Commission's certificate order and the Settlement Agreement pursuant to any modifications or conditions imposed by the Commission, with the exception of any modification subsequently made on rehearing by the Commission at the request of a Contesting Party.

If the Commission approves the Settlement and Certificate Application or the Settlement Agreement subject to conditions or modifications that are unacceptable to either the Pipelines or a Settling Party, the Pipelines or such other party may, by written notice filed with the Commission and served on all parties no later than five (5) business days after a Commission rehearing order that retains in effect the offending condition or modification, declare the Settlement Agreement null and void, and it will not be admissible in evidence or in any way described or discussed in these or any other proceedings. If the Commission severs a Contesting Party or Parties from the Settlement Agreement and such severance is unacceptable to the Pipelines, the Pipelines may, pursuant to the procedures set forth in the preceding sentence, declare the Settlement Agreement null and void. In the event that the Settlement Agreement is declared null and void, the Pipelines will be free to accept the certificate authorized by the

Commission and, in the exercise of the Pipelines' sole discretion, proceed as they determine is in their best interests with respect to all other issues. All other parties are free to take whatever positions they deem appropriate regarding the actions taken by the Pipelines in pursuit of these other issues.

Subject to the provisions of the Moratorium Period in Article VI of the Settlement Agreement, the Settlement Agreement will terminate on the date that Carolina Gas files a general rate change under Section 4 of the NGA or on the effective date of any general rate change resulting from an NGA Section 5 general rate proceeding with respect to Carolina Gas' jurisdictional rates.

#### **ARTICLE X** **NON-SEVERABILITY OF TERMS AND PARTIES**

Article X states that the Settlement Agreement embodies an integrated agreement. None of the terms of the Settlement Agreement are agreed to without each of the others. The various provisions of the Settlement Agreement are not severable. The severance of any provision or any party will be considered a modification of the Settlement and such severance will be subject to Section 9.2 of the Settlement Agreement.

#### **ARTICLE XI** **RESERVATIONS**

Article XI sets forth reservations regarding the Settlement Agreement. According to Article XI, unless and until the Settlement Agreement becomes effective pursuant to its terms, the Settlement Agreement will be privileged and of no effect and will not be admissible in evidence or in any way described or discussed in any proceeding before any court or regulatory body (except in comments on the Settlement Agreement filed with the Commission in response to the filing of the Settlement Agreement).

As stated in Article XI, the provisions of the Settlement Agreement are intended to relate only to the specific matters referred to therein and by agreeing to the Settlement Agreement, neither the Settling Parties nor the Pipelines waive any claim or right which they may otherwise have with respect to any matters not expressly provided for therein. Moreover, in consideration of all elements of the negotiated settlement, neither the Pipelines, the Commission, nor any other Settling Party intends that any element of the Settlement Agreement constitute precedent or be deemed "settled practice" as that term was interpreted in *Public Service Commission of New York v. F.E.R.C.*, 642 F.2d 1335 (D.C. Cir. 1980). It is further specifically understood and agreed that the Settlement Agreement represents a settlement with respect to jurisdictional rates to be charged by Carolina Gas. The Pipelines, the Commission, and other persons and parties will not be deemed to have approved, accepted, agreed or consented to any ratemaking principle or any other method of cost of service or other determination, or to any allocation underlying or supposed to underlie any of the rates provided for in the Settlement Agreement, or be prejudiced thereby in any future proceedings, except as expressly stated therein. The Pipelines and other parties will not be bound or prejudiced by any part of the Settlement Agreement unless it is approved and made effective pursuant to its terms.

## **ARTICLE XII**

### **STANDARD OF REVIEW**

Article XII sets forth the standard of review to apply to the Settlement Agreement. Once the Settlement Agreement becomes effective pursuant to the provisions of Article IX, the standard of review the Commission will apply when acting on proposed unilateral modifications to the Settlement Agreement, either on the Commission's own motion or on behalf of a signatory or a non-signatory, will be the "public interest" standard of review rather than the "just and reasonable" standard of review.

**Information to be Provided with Settlement Agreements:**

The "Notice to the Public" issued by the Chief Administrative Law Judge in October 2003 provides that to assist the Commission (as relevant here) in its determination as to whether a settlement should be approved, an Explanatory Statement should address the following five questions:

- a. What are the issues underlying the settlement and what are the major implications;
- b. Whether any of the issues raise policy implications;
- c. Whether other pending cases may be affected;
- d. Whether the settlement involves issues of first impression, or if there are any previous reversals on the issues involved; and
- e. Whether the proceeding is subject to the just and reasonable standard or whether there is a Mobile-Sierra language making it the standard, i.e., the applicable standard of review.

The Pipelines respond to these questions here.

**Underlying Issues and Major Implications of the Settlement Agreement**

The Settlement Agreement is an integrated and comprehensive settlement of the issues associated with the Settlement and Certificate Application, which the Pipelines also are filing today. In the Settlement and Certificate Application, the Pipelines request all FERC authorizations necessary to permit the merger of SCG into SCPC to form a single, integrated interstate pipeline, subject to the jurisdiction of the Commission. The resulting, merged entity will be Carolina Gas.

Whether the Settlement Agreement is a fair and reasonable resolution of the issues involved in the Settlement and Certificate Application raises the underlying issues of whether the proposed merger is required by the public convenience and necessity and whether the Settlement Rates, Settlement Tariff and other settlement provisions represent fair and reasonable terms to apply to service on the merged entity.

The major implication of the Settlement Agreement will be to enable the proposed merger and formation of Carolina Gas, which would cause approximately 1,400 miles of pipeline to no longer be limited to intrastate service, but instead to be dedicated to open access interstate service, thereby expanding interstate pipeline infrastructure without the delay, uncertainty and environmental disturbances inherent in a new construction project, without costly and time-consuming litigation before the Commission while at the same time furthering Commission policies as set forth below.

#### **Policy Implications**

Approval of the Settlement Agreement is consistent with and furthers the Commission's policy of encouraging parties to resolve their issues through settlement before submitting filings at the Commission. The Settlement Agreement reflects an overall balancing of the various competing interests among customers and among the Pipelines and the various customer constituencies. Approval of the Settlement Agreement will provide current SCPC and SCG customers as well as future Carolina Gas customers with the benefits of the services offered by Carolina Gas, without the expense and uncertainty of litigation.

The Pipelines' proposal serves the present and future public convenience and necessity by authorizing the dedication of substantial additional infrastructure to the open access interstate market, thereby facilitating new interstate gas transportation services that will foster natural gas supply diversity and competition in the southeastern United States and beyond. The Carolina Gas system will be poised, through its existing facilities and through future expansions, to provide new alternatives for moving regasified LNG from Elba Island to markets served directly by Carolina Gas and to downstream markets. Prompt issuance of the requested authorizations will further the Commission's objective of expediting the development of energy infrastructure

projects<sup>7</sup> and would be consistent with its intent to make final decisions on proposed projects in a timely manner.<sup>8</sup>

In addition to improving interstate infrastructure and providing a means to bring additional supply to market, the combination of the SCPC and SCG systems will facilitate strict Standard of Conduct<sup>9</sup> compliance because the Hinshaw pipeline, SCPC (technically an Energy Affiliate under the Standards), will be exiting the merchant business and combining with SCG to form a single transportation-only Transmission Provider. SCPC's pre-merger customers and customers in other markets will benefit from the Commission's Order No. 436 open access and Order No. 636 unbundling policies, which prior to the merger do not apply to SCPC.

#### **Other Pending Cases, Issues of First Impression, Reversals**

To the Pipelines' knowledge, the Settlement Agreement will not affect any other pending cases, nor does it involve any issues of first impression nor any previous reversals on the issues involved.

#### **The Applicable Standard of Review**

If no party contests the Settlement Agreement, the applicable standard of review of the Settlement Agreement is the standard for approval of uncontested settlements set forth in Rule 602(g) of the Commission's regulations: whether it "appears to be fair and reasonable and in the

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<sup>7</sup> See *Expediting Infrastructure Construction To Speed Hurricane Recovery*, 113 FERC ¶ 61,179 at PP 1-3, 6 (2005) (temporarily waiving blanket certificate restrictions in order to expedite the construction of infrastructure); see also Energy Policy Act of 2005 at § 313(c)(1)(A), Pub. L. No. 109-58, 119 Stat. 594 (2005) (directing FERC to "ensure expeditious completion" of NGA Section 7 proceedings); *Coordinated Processing of NGA Section 3 and 7 Proceedings*, 113 FERC ¶ 61,170 (2005) (implementing the Energy Policy Act's directive by delegating to staff the authority to establish deadlines for all federal authorizations necessary for NGA Section 7 proposals).

<sup>8</sup> FERC Strategic Plan FY 2005 - FY 2008, Goal 1, Objective 1.1, (available at <<http://www.ferc.gov/about/strat-docs/strat-plan.asp>> (last updated Aug. 8, 2005)).

<sup>9</sup> *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161 (2004), *reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166 (2004), *reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2005), *reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005).

public interest."<sup>10</sup> If any party contests the Settlement Agreement, the Commission may decide the merits of the contested settlement issues, may sever the contesting parties or take other appropriate action pursuant to Rule 602(h).

Once the Settlement Agreement becomes effective pursuant to the provisions of Article IX, the standard of review the Commission will apply when acting on proposed unilateral modifications to the Settlement Agreement, either on the Commission's own motion or on behalf of a signatory or a non-signatory, will be the "public interest" standard of review rather than the "just and reasonable" standard of review.

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<sup>10</sup> 18 C.F.R. § 385.602(g).